

PEACEMAKING THROUGH REMAKING: THE
INTERNATIONAL CRIMINAL TRIBUNALS AND THE
POLITICAL AND SOCIAL RECONSTRUCTION OF
OCCUPIED JAPAN AND GERMANY AFTER 1945

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Abstract

This thesis analyses the processes through which the United States sought to influence the political and social reconstruction of occupied Japan and Germany in the aftermath of the Second World War. An important aspect of this was debate within the US over what kind of peace settlement to be imposed on the defeated states. The debate over whether this settlement should be harsh or more moderate involved different visions of the political and social reconstruction and futures of Japan and Germany. While both arguments shared the same basic aims of democratisation, deradicalisation, and demilitarisation, they differed substantially on how to achieve these aims. One aspect of moderate plans was the establishment of international criminal tribunals to try the leadership of the defeated regimes deemed responsible for the atrocities committed. An important part of the prosecution arguments was the idea of the victimisation of the Japanese and German people by their own governments. This was an important part of moderate peace arguments and extended into the political and social reforms implemented during the occupations. This idea of victimisation was not only held by the Japanese and German people, but by the occupiers as well.

Introduction

The end of the Second World War in 1945 saw the end not only of the conflict that had begun with the German invasion of Poland in September 1939 but also the conflict in the Asia-Pacific region that had started with the Japanese invasion of Manchuria in 1931. Allied insistence on unconditional surrender meant that for Germany there would be no repeat of the 1918 armistice. The end of the war saw the German armed forces pushed back into Germany and Allied forces occupied almost all of Germany. What remained of the government of the Third Reich at Flensburg in the north was simply ignored until it was dissolved and its members arrested. While the main islands of Japan remained unoccupied at surrender, Allied forces had occupied Okinawa to the south and had engaged in a sustained bombing campaign and blockade of Japan for months. While substantial Japanese forces remained when Japan finally surrendered, after the nuclear strikes on Hiroshima and Nagasaki and the Soviet invasion of Manchuria in August 1945, Japan's defeat was clear.

The collapse and surrender of the Japanese militarist and *NSDAP* regimes in 1945 and the occupation of their territory by the victorious Allied powers left those powers with the question of what to do with their defeated enemies. The unprecedented scale of the crimes and atrocities of the defeated regimes horrified the victors. Yet the nature of these defeated regimes, as authoritarian if not totalitarian, made this more problematic. These regimes utilised the power of propaganda, intimidation and indoctrination to mobilise the people. Yet the regimes could never have succeeded without at least some significant level of public support, whether passive or active thus potentially making them complicit. Existing international law was capable of dealing with offences by soldiers such as mistreatment of prisoners of war. However, the scale of crimes against civilian populations by enemy states and the crimes against their own citizens was a novel problem. Debates over this issue occurred during the war, but crystallized most clearly in late 1944 and 1945, when the Allies, on the insistence of the United States, agreed to establish international criminal tribunals to try German and Japanese war criminals on three grouped charges. The indictments set out the charges of crimes against peace (and

the conspiracy to commit these), crimes against war, and crimes against humanity against the accused individuals (and organisations at Nuremberg). The successful prosecution of these charges against the defendants in general terms helped to establish these concepts as international norms and ideas in the public consciousness. The punishment of state officials on an individual basis for the crimes of their regime in such a manner was a watershed moment, creating new norms that, even if not uniformly or universally enforced, have become an important part of the international order post-1945.

The end of the war saw the occupation of both the defeated states. Importantly, however, the legal form differed from Germany to Japan, which had significant consequences. The occupation of Germany was most plausibly described as a case of *debellatio*, as it resulted in the complete dissolution of the German Reich.¹ The occupying powers formally declared that as no German government existed, they (through the Allied Control Council) would exercise governmental power over Germany. The territory of the pre-1938 Reich was divided into four occupation zones with large parts of the Soviet zone being transferred to Poland, and the capital Berlin divided into four parts. The Control Council was to co-ordinate policy between the zones and Allied intentions were that in the future a single German government would sign a final peace settlement with the Allied Powers. Military governments with differing policy objectives and administrative approaches administered each of the four zones. In one sense, there were four German occupations rather than one. Conversely, while Japan came under the administration of the Supreme Commander for the Allied Powers (SCAP), General Douglas MacArthur, the Japanese government remained operational. The Japanese surrender, while unconditional, did not result in the dissolution of the Japanese government. Territory acquired by Japan post-1894 was confiscated from Japan but the main islands of Japan remained a single territorial unit. Thus, the occupation of Japan was indirect as SCAP ruled through the Japanese government, issuing directives and requests for the latter to take particular actions. This had important consequences, as it ensured there was a greater degree of co-operation and collaboration between SCAP and a pre-existing Japanese government

¹ The term denotes the ending of a war through the absolute subjugation of one of the opposing sides. There is some debate over Germany, as technically only the armed forces surrendered on 7 and 8 May 1945 and the *Bundesrepublik Deutschland (BRD)* the current German state sees itself as the legal successor of the Third Reich. See Eyal Benvenisti, *The International Law of Occupation* (Princeton, Princeton University Press, 2004) pp. 92-95.

throughout the occupation. The Japanese government therefore was able to moderate some policies through resistance or even the possibility that this might occur, or through the feedback the government gave on proposed reforms. SCAP officials were always aware of their power, but also the desirability of having Japanese agreement for reforms that would last.

The implementation of the international criminal tribunals was a key part of the proposals of officials who supported a moderate peace settlement and occupation of Japan and Germany. During the planning discussions for the future occupations, a basic division emerged between those who advocated a harsh punitive peace and those who advocated a more moderate peace. These different ideas shared some basic aims for the occupation, but where they differed was their implementation. Harsh and moderate peace advocates largely agreed on three of the 'four D's' — deradicalisation (what was referred to as denazification in Germany), demilitarisation, and democratization. The fourth 'D' was economic policy, where harsh peace advocates argued for what essentially would be deindustrialisation where the Japanese and German economies were to have their heavy industrial capacity removed and they would be returned to essentially agrarian societies incapable of modern industrial-scale warfare. Moderate peace advocates had their own economic policy that aimed at breaking up monopolies and cartels, referred to as 'decartelisation', but not on the scale of the policy of deindustrialisation. While sharing three basic objectives for the occupation, harsh and moderate peace advocates differed fundamentally over where responsibility and culpability for the crimes of the regimes lay and particularly on the responsibility of the populations of the enemy states. Harsh peace advocates argued for collective responsibility, where the broader population was to be held responsible, and more wide-ranging punishment to be imposed. Moderate peace advocates argued for more narrow responsibility, focused on the leaders and functionaries of the *NSDAP* and Japanese 'militarists'. Moderates argued that the people as a whole had been the victims of their regime, which had intimidated and controlled them, and that 'true criminality' lay within the leadership groups of these regimes. Moderates also focused on the idea of 'reorientation' that was expressed in terms of encouraging the occupied societies to change, rather than imposing harsh revolutionary changes upon them. This was semantic in one sense, as the reforms often were revolutionary although the distinction between

being held responsible and being subjected to revolutionary change was not exclusive. However, it reflected the idea that moderate peace advocates wanted to build lasting change through collaboration and acceptance and did not want simply to force change. The idea of reorientation embodied this, as it did not reflect a complete revolution of government and society but a shift in these structures and norms of Japan and Germany. The shared major aims of the occupations might also be split into two categories, though importantly these too are interconnected. Each of the major objectives was conceived and applied in both 'political' and 'social' forms because both harsh and moderate peace advocates understood that to create lasting peace required more than basic political reforms, but combined political and social reform. The experience of the Weimar Republic from 1918-33 had proved that simply changing the form of government was insufficient to create lasting peace.

The idea of limited culpability and the victimisation of ordinary Germans and Japanese by their regimes, which I term the 'victim thesis', underpinned the entire moderate peace approach as it justified the moderation and relative leniency of proposed reforms. If the people as a whole were not truly culpable, then they should not face harsh punishment. Further, it justified particular reforms on the basis that the people were victimised by the subject of reform. The victim thesis was key for the international tribunals because it was a vital part of the prosecution narrative, arguing that as a part of their conspiracy to wage aggressive war, the people were subjected to indoctrination and intimidation. The people had been transformed into passive actors or bystanders to the true criminal conspirators — the leaders. This idea was based on analysis and study of available information about the operation of the enemy regimes, and on political and ideological grounds. Many moderate peace advocates had had some experience of the defeated nations, and perhaps some level of empathy with their peoples. In many cases, advocates were supporters of New Deal liberalism and saw the occupations as an opportunity to realise these ideas with fewer restrictions. Others argued that the occupations were an unprecedented and vital opportunity to help create a new world order through making exemplary states that would act as positive examples for how the world should be. Other advocates based their ideas on Cold War geopolitical and strategic aims creating friendly states to serve Allied interests. Whatever its motivation, the victim thesis had important consequences for the course of the Allied occupation, the reforms undertaken, and the way in which the futures

of Japan and *BRD* developed. The victim thesis aided the acceptance of Allied reforms through scapegoating the leadership group and avoiding general blame of the people as a whole. The removal of leadership groups undoubtedly had a positive effect in building the new democracies by removing (though not completely) problematic elements from Japanese and German society and allowing new political elites to flourish. The avoidance of placing blame on the people as a whole also likely aided reconstruction, encouraging people to move on from the past and begin the task of rebuilding their society both physically and psychologically. However, the idea also encouraged a sense of collective amnesia about the past, with the dominant narrative being that of passive victimhood. This collective amnesia dominated the popular narrative in the early postwar years and included tropes that emphasised Japanese and German suffering, sometimes at the expense of the suffering of those in occupied Europe and the Asia-Pacific region. The idea of the domination of the passive population by leadership groups has since been critiqued and problematised by scholars exploring the relationship between the population and the state.² The collective amnesia was also broken down to some extent with more honest confrontations with the past in both Japan and Germany (the 1960s and the series of Holocaust trials being key). Despite this, the popular narrative of life under these regimes within Japan and Germany retained parts of the victim thesis provoking controversy when challenged.

The three shared occupation aims were interconnected and underpinned almost all the major reform policies of the occupations. There were rarely clear-cut divisions between the major objectives of the occupations and proposed reforms often sought to meet more than one objective. Different aspects of reforms sought directly or indirectly to meet the major objectives and it is difficult (and artificial) to disentangle these. As an example, the demobilisation and abolition of the military was directly related to demilitarisation.

² Useful examples of how scholars have problematised the relationships between the *NSDAP* and the people, or other state institutions include Robert Gelatelly's *Backing Hitler: Consent and Coercion in Nazi Germany*, (New York, Oxford University Press, 2001), Omer Bartov's work on the *Wehrmacht, Hitler's Army: Soldiers, Nazis, and War in the Third Reich*, (New York, Oxford University Press, 1991) and Michael Burleigh's *The Third Reich: A New History*, (New York, Hill and Wang, 2001). Richard Evans in *The Third Reich in Power*, (London, Penguin, 2006), while emphasising the violence and repression of the Third Reich, highlighted the collaboration with and popularity of policies that coincided with existing popular issues at least. The work *We Knew: terror, mass murder and everyday life in Nazi Germany : an oral history* by Eric A Johnson and Karl-Heinz Reuband, (Cambridge, Basic Books, 2005) problematises in particular the arguments about the lack of knowledge (and thus emphasising collaboration as bystanders) in the Holocaust

However, it also indirectly connected to democratisation by eliminating institutions that were perceived to have a strong anti-democratic influence in government and society. Reforms during the occupation were often based on a variety of motivations and objectives from cynical realism to highly idealistic goals. Those implementing the reforms also often had multiple reasons for their actions. The architects of the international criminal tribunals were no exception; as they sought to punish the radical elements of the former regimes, attack the perceived militarism of Japanese and German society, and to support efforts at democratisation by highlighting the flaws of the former regimes. Analysts of the trials commonly see them in isolation from the occupations without contextualisation as part of an ongoing process or part of a particular approach to peacemaking.³ While many analyses of the trials are from a legal perspective and the lack of historical contextualization is perhaps more understandable, viewing the tribunals in isolation can lead to the observer missing their deeper importance as a part of the attempt at national reconstruction. While the international tribunals were a demonstration of justice, to punish the atrocities of the former regimes, and an attempt to reshape international political and legal norms, they were also a part of the effort to deradicalise, demilitarise, and democratise Japan and Germany. Furthermore, they were an important part of the moderate peace and occupation arguments. The trials were proposed as a direct response to the harsh peace proposals of US Treasury Secretary Henry Morgenthau, and the arguments made at the IMT and IMTFE mirrored the arguments made during planning debates and in the process of implementing reforms by moderate peace advocates.⁴ The trials therefore are important in understanding the moderate peace approach taken during the occupations.

Given the scale and range of the reforms undertaken during the occupations, it is impossible adequately to analyse all aspects of them. Even when limiting the scope of the research to those reforms that are most relevant to exploring the themes of the victim thesis in connection with the aims of the occupation, there is far too much ground to cover

³ For example, the collection *Perspectives on the Nuremberg Trials*, ed. G. Mettraux, (Oxford, Oxford University Press, 2008).

⁴ *Letter from the Secretary of War (Stimson) to the President, September 5, 1944*, <http://teachingamericanhistory.org/library/document/documents-regarding-the/#4> (last accessed 9 April 2015). An important example of harsh peace ideas was the Morgenthau Plan of September 1944 that advocated for harsh political purges and the dismantling of German industrial capacity, as well as proposing the break-up of Germany into multiple smaller states.

to be able properly to analyse all of their aspects. This thesis takes the approach of using particular case studies to explore ideas, rather than seeking to explain everything about a particular category of reform. The major focus of analysis is on American ideas and reforms given the limited scope of the thesis, and comparisons are made between the US-dominated occupation of Japan and the US Zone of occupied Germany rather than the other three occupied zones. Further, the focus on American reform efforts has been selected because the international criminal tribunals were primarily an American idea and championed by the Americans among the Allied powers.

The analysis involves the synthesis of primary and secondary material. One core primary source is the proceedings of and documents produced by the international tribunals. The trial proceedings and judgments, and the documents produced from prosecution discussions show the rhetoric used by the prosecutors and the construction of their cases and narratives. These emphasised particular ideas about the relationship between the state and people, and problematised aspects of the existing societies and former regimes. An important group of sources are the materials produced by various government agencies and departments, and the occupation authorities. These materials offer valuable insights in analysing the ideas and intentions behind particular reforms, and of the development of ideas of victimisation within Allied governments both before and during the tribunals and occupations. The contemporary and more recent writings of participants in the tribunals and occupations on those issues are a useful tool (though placed in their context and biases accounted for). In terms of secondary materials, the focus is placed on how other scholars and authors have understood the tribunals and occupations, and the ideas of the victim thesis in the context of Japan and Germany. The core of my analysis is focused through political and legal historical lenses through textual analysis and comparison. It is largely a political history of the planning and implementation of the occupations and the tribunals, analysing and contextualising the words and actions of those involved. More than this however, it seeks to explore the deeper question of how the victors treated their defeated enemies, and the new world they wished to create. The goals of the occupiers to democratise, deradicalise, and demilitarise Japan and Germany in order to create lasting peace were surely noble, even if not entirely altruistic. This thesis explores the construction and use of particular narratives that sought to explain what had occurred, and to justify what was being done

in response. While much of the analysis is focused on specific political and legal issues, the interaction of these particular issues and their wider meaning on a society-wide scale is considered. Chapter 1 explores the historiography around the IMTFE and IMT, and summarises the historiography of the occupations. The English-language historiography on the IMTFE and the occupation of Japan has been more limited than that on the IMT and Nuremberg, but both largely share the sense of disconnection and isolation between their subjects. Chapter 2 explains the idea of the victim thesis, and explores the process of political purging in connection with the occupation objectives. Chapter 3 explores the conspiracy concept and selection of defendants at the international tribunals as connected with the occupation objectives. Chapter 4 focuses on political reorientation in the context of the demobilisation and abolition of the military, and on constitutional reform in Japan and the *BRD*. Chapter 5 analyses social reorientation, focusing on education reform and using reforms of textbooks and curricula, and decentralization of administrative structures as case studies.

Chapter 1: Analysis of the historiography on the international criminal tribunals and the occupations

Introduction

The complexity of the post-war occupations and their consequences has spawned substantial historiographies, as has the IMT. There have been multiple strands within these historiographies depending on their context, author, and subject and these have often related to issues beyond the occupation or tribunals. Works on the occupations have often related to exploring the origins of the Cold War or the economic reconstruction of Japan and Germany. The basic historiographical schools of Cold War history thus have some relevance to analysing historiography on the occupations. These basic schools of 'orthodox', 'revisionist', and 'post-revisionist' historiography have influenced occupation histories over the past sixty years. Other works have been situated in the context of the post-war histories of Japan and Germany, presenting the occupation as the first stage or precursor of the development of these states. Legal analyses in particular focus on the tribunals in terms of understanding the construction of the new international legal order, and international criminal law. This has meant that beyond providing basic factual context, many of these neglect discussion of the tribunals within the occupation, and any interconnectedness between the two. Both historical and legal analyses of the tribunals have tended to focus almost entirely on the tribunals or the evolution of international legal norms beyond the tribunals. Conversely, works on the occupations treat the tribunals more usefully as an episode within the occupations, but often pass over the deeper significance as a part of the occupations. Where connections with other aspects are made, they have tended to be the 'obvious' ones such as the political purging process, or focusing on particular issues of the tribunals with a wider impact. While discussions around issues such the initial reactions and understandings of the Holocaust or concerning the shielding of Hirohito from prosecution are fruitful and interesting, different issues around the interconnectedness of the tribunals and occupations have been relatively neglected.

Further distinctions in published works also exist. Some are what could be termed 'contemporary' analyses or works, published soon before or during the occupations (or

very soon after) discussing issues in planning, operation, or outcomes. These are useful in that in some respects they mirror later historiographical debates over what was occurring. Another category is that of 'participant' analyses or works authored by those who were participants in the tribunals, occupations, and the planning of these. These were published at the time, soon after, and sometimes years later (such as Telford Taylor's work on the IMT in the form of a memoir). These offer valuable insight into exploring the intentions of the tribunals and occupations though of course are potentially biased or edited with the benefit of hindsight. Generally, the body of work on the occupation of Germany and the IMT respectively has been more substantial than that on Japan and the IMTFE. There are several reasons for this; language barriers with scholars more likely to read and speak German than Japanese, the perceived greater importance of Germany and the IMT in the narrative of world events, and greater availability of materials. This is a self-fulfilling idea, as Germany and the IMT, it appears, are just more familiar so are more likely to be analysed and discussed. The occupation of Japan and the IMTFE are relatively 'forgotten' or neglected in Western scholarship. Often the works that do examine the occupation relate more to Cold War issues than on the occupation reforms. Where works do explore occupation reforms, they are often quite specific in their detail (an analysis of education reform or political purging for example).

In terms of the tribunals, the historiography on the IMTFE (at least in English) has been far more limited. While a substantial body of work has been written on the IMT and its impacts, the historiography on the IMTFE has been far more limited. Less than ten specific English language academic analyses on the IMTFE have been published, and these are roughly split between historical and legal analyses. There has been more work done since the late 1990s, but the comparison to the body of work on the IMT is still quite stark. Several reasons might help to explain this. The primary documents of the IMT are more readily and widely available than those of the IMTFE, with a commercially published complete set of transcripts of the latter published only in 1981⁵ (unlike the IMT transcripts published quite quickly by 1947). Another distinction between the IMT and IMTFE is that the IMTFE was relatively more problematic on both legal and practical grounds. While the IMTFE sought to base itself on the IMT and provide some form of

⁵ R.J. Pritchard and S.M. Zaide (eds), *The Tokyo War Crimes Trial*, (New York, Garland, 1981).

reinforcement for its principles, the greater focus on crimes against peace and especially the conspiracy charge created problems. There were also concerns at the time (that have debated since) about particular legal decisions (such as the exclusion of Hirohito) and the judicial disunity at its conclusion, which helped to sully its image. Practically, the IMTFE was less well resourced in terms of quality and quantity of personnel. Both the prosecutors and judges that took part in the IMTFE were generally of lesser 'status' than those Allied prosecutors and judges present at the IMT. This is not to say that they were generally less skilled or effective, but rather that it was not considered to have the same level of importance by the officials themselves or the governments sending them. As an example, the chief US prosecutor at the IMT was a Supreme Court Justice, while the chief US prosecutor in Tokyo was a prosecutor from within the Justice Department — not quite a nobody, but not on the same level as one of the judges from the highest US court.

Historiography of the IMTFE

Beyond a few initial works published at the time or soon after (largely accounts from participants and aimed at attacking or justifying aspects of the trial), the first proper English language analysis only came in 1971.⁶ *Victor's Justice* by Richard Minear was a highly polemical critique of the IMTFE and its operation. Minear argued the IMTFE was an exercise in "victor's justice" and were a tool of justification of Allied policies and actions during the war and an imposition of American dominance over Japan and East Asia. Minear's analysis is bound up in the politics of the time, as he himself readily admits and he sees a direct path from the trials to the war in Vietnam stating, "Vietnam turned my scholarship in a political direction" and "this book is political scholarship. It is political in its choice of subject. It is political in its tone. It is political in the implications I draw for the present day."⁷ However, Minear focused almost solely on the conduct of the trial itself and overall saw the trials as "barely disguised revenge."⁸ Minear barely discussed the purposes of the trial themselves, or how they were intended to link to the occupation, in fact Minear barely mentioned the occupation at all. The few comments he did make about

⁶ Examples of participant accounts include Solis Horwitz 'The Tokyo Trial', *International Conciliation* 465 (1950) 471-584, and Joseph B. Keenan and Brendan F. Brown, *Crimes Against International Law*, (Washington DC, Public Affairs Press, 1950).

⁷ Richard Minear, *Victor's Justice: The Tokyo War Crimes Trial*, (Princeton, Princeton University Press, 1971), p. xiii.

⁸ Minear, *Victor's Justice*, p. 19.

the wider purposes of the trial however are interesting. He argues by implication that in some ways, the motivations of the Allies in trying war criminals were not inherently bad; Minear cited a 1945 memorandum concerning Nuremberg; "Condemnation of these criminals after a trial, moreover, would command maximum public support in our own times and receive the respect of history. The use of the judicial method will, in addition, make available for all mankind to study in future years an authentic record of Nazi crimes and criminality."⁹ Minear contended that the post-war trials were also aimed at justifying Allied conduct; "the trials were designed not only to punish wrongdoers but also to justify the right side, our side."¹⁰ Minear also suggested that the trials had the purpose of creating an official record.¹¹ Overall however, Minear did not explore the purposes of the trials in any detail, rather he engaged in a polemical attack on the IMTFE almost wholly accepting the dissent of the Indian Justice Pal, and of revisionist Japanese scholarship.¹²

Arnold Brackman's *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials*, published in 1987, was based on Brackman's work as a journalist during the IMTFE. As such, it is primarily reportage and a participant history. However, it has elements of useful analysis that make it a part of the historiography. Brackman's work provided a detailed and clear narrative of the IMTFE, which in itself was rare at the time of publication. He noted, "In truth, the IMTFE has simply been swallowed by the biggest black hole of the twentieth century, only two [books]¹³ have dealt with the Tokyo trial."¹⁴ Yet, despite the value of the book in providing a narrative of the events of the IMTFE that had been lacking (and beyond Brackman's work, arguably still is), he generally did not

⁹ Memorandum to President Roosevelt from the Secretaries of State and War and the Attorney General, January 22 1945," in *International Conference on Military Trials*, Department of State Publication No. 3080 (Washington, U.S. Government Printing Office, 1949) p. 6, cited in Minear, *Victor's Justice*, p. 10.

¹⁰ Minear, *Victor's Justice*, p. 13.

¹¹ *Ibid.*, at pp. 126-7.

¹² Justice Pal's dissenting judgment found all defendants not guilty on the charges in the indictment. He did not deny the atrocities of the Japanese, but felt that the charges of crimes against peace were illegitimate and hypocritical. He critiqued the motives of the Allies in creating the IMTFE (a tool of revenge) and questioned how the defendants could be prosecuted for aggression given the form and methods of control in their colonial holdings. Pal's dissent was 1,235 pages in length and a stinging anti-colonial critique that has become a core part of revisionist and neo-nationalist arguments in Japan, whom dedicated a monument after his death at the Yasukuni Shrine.

¹³ Brackman is referring to Keenan Brown's *Crimes Against International Law* (1950), Minear's *Victor's Justice* (1972). Interestingly, he seems to ignore Piccigallo's 1979 work in this statement even though it is cited in his bibliography.

¹⁴ A.C. Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials*, (New York, William Morrow and Company Inc., 1987), p. 22.

grapple with issues of the IMTFE in connection with the occupation. Rather, like Minear before him, he focuses on the IMTFE itself and questions such as the validity of charges, the selection of defendants, whether or not the trial was in fact fair and legitimate. Brackman's general view of the Trial opposed the line of Minear, and Brackman although conceding the IMTFE were not perfect and there were substantive issues with it, overall he considered it both fair and legitimate, and a valuable exercise. Brackman provided useful analysis even if only in passing or by inference. In terms of understanding the purposes of the trial, Brackman did not particularly focus on such issues, however he did make comments that suggest that he understood the purpose of the trial was part of a process of publically shaming former leaders and educating the Japanese public.¹⁵

Philip R. Piccigallo's *The Japanese on Trial* explored the roles and purposes of the trials within his narrative and contended that war crimes trials after 1945 were always connected to other policies and objectives. He noted, "Japanese war crimes trials were made to fit into the overall national and foreign policy objectives of each Allied country."¹⁶ Piccigallo strongly emphasised that the trials did not take place in isolation and that they were intimately linked to wider political and social policies. Especially important was the dominant role the U.S took in both the trials and the occupation; "America's principal role in Japanese war crimes trials ran parallel to its leading role in the occupation...The Tokyo Trial of major war criminals functioned throughout under the all-pervading shadow of SCAP."¹⁷ Piccigallo focused particularly on the policies of demilitarisation and democratisation and saw the IMTFE as an important part of this.¹⁸ Overall, it is clear that in his analysis of the IMTFE, Piccigallo understood that at least in terms of demilitarisation and democratisation, the trial were a key aspect of the policies of the occupation as a whole. However, while making useful comments he did not build upon this with a more detailed analysis of the reform undertaken in the occupation.

Timothy Maga's *Judgment at Tokyo* is one of the more recent English-language works on the Tokyo trials and consists of a narrative analysis of the Tokyo trials, a chapter

¹⁵ Brackman, *The Other Nuremberg*, pp. 109-10; p. 122; pp. 212-13.

¹⁶ P.R. Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the Far East, 1945-1951*, (Austin, University of Texas Press, 1979), p. xiii.

¹⁷ Ibid., p. 6.

¹⁸ Ibid., p. 7.

exploring trials outside of Tokyo at Guam, and an exploration of ethical issues. Like Brackman, Maga held that the IMTFE was legitimate even if flawed, and that it was an important part of the occupation. Maga particularly emphasised the role of the IMTFE as a method for transition and a public statement that a new Japan was emerging from its past with the help of SCAP. Maga argued, “[that] while the Occupation Government planned Japan’s future, the Tokyo trials punished its past. Since occupation authorities and the key leaders of the new Japanese government agreed with the concept that the nation could not move forward without moving away from its militarist extremism, the trials served as both a practical and symbolic transition.”¹⁹ Maga cited several individuals (both Japanese and American) in support of the point that this concept of transition was a consciously important motive, including General MacArthur²⁰, Chief Prosecutor Joseph B. Keenan²¹, an important SCAP official²², and two Japanese journalists.²³ However, while Maga’s observations on the purposes of the IMTFE are interesting and useful, they are in effect only comments made in passing. Beyond discussion about the role of demilitarisation and democratisation and some discussion of the idea of transition, Maga did not particularly explore interconnectedness in depth.

Neil Boister and Robert Cryer’s *The Tokyo International Military Tribunal: A Reappraisal* was the most recent detailed English-language analysis of the IMTFE. For the most part, it was a legal analysis as opposed to a historical one, and grappled with many of the same questions that previous writers have grappled with. The authors provided an interesting discussion of proceedings before the end of the war, exploring how Article 10 of the Potsdam Declaration²⁴ came to be. There was also an interesting discussion on the process of the selection of the accused, and legal questions such as the idea of command responsibility. In terms of an historical analysis of the IMTFE and their role within the occupation, Boister and Cryer did not directly discuss the issue, however they did make several comments that suggested an understanding of the IMTFE as having particular

¹⁹ T. Maga, *Judgment at Tokyo*, (Lexington, University of Kentucky Press, 2001) p. 69.

²⁰ Ibid., p. 69.

²¹ Ibid., at pp. 70-71, p. 77.

²² Ibid., at pp. 86-87.

²³ Ibid., p. 72-73, p. 88.

²⁴ “[w]e do not intend that the Japanese people shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals including those who have visited cruelties upon our prisoners.”

purposes and roles. In discussing the non-selection of particular individuals, they make the point that the goal set out in occupational policy documents²⁵ was to be “achieved partly by the elimination of militarists, but the transition to a friendly government had also to involve the retention of ‘friendly’ Japanese political figures who had played significant roles in the pre-war and war-time Japanese governments.”²⁶ The authors also explored the issue of the non-selection of Hirohito implicitly in connection with occupation policies.²⁷ There is also discussion of the apparent failure of the IMTFE in creating a historical record – by implication setting out the creation of a historical record as one of the purposes of the IMTFE.²⁸ Overall, this work was a legal analysis of the IMTFE and while it provides valuable insights on legal questions, it dealt with the interconnectedness with the occupation’s reforms in providing context, and the idea of the moderate peace in passing.

Two Japanese authors writing in English have published analyses of the IMTFE recently. Madoka Futamura’s *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and Nuremberg Legacy* of 2007 was probably the most comprehensive English-language work concerning the IMTFE in relation to the occupation. Yet, even here the issue of the purposes of the IMTFE was not the specific focus of her work. She noted the paucity of research into the IMTFE generally and suggested several reasons for this (language barriers being an important example) Further, she saw that the IMTFE “[has] not been erased from Japanese national memory; rather it persistently haunts society whenever people try to face the past, war, defeat and the issues of war responsibility and reconciliation.”²⁹ Futamura’s analysis aimed to explore the idea of the ‘Nuremberg legacy’ and she discussed several issues around the roles that the Nuremberg trials were intended to play. In terms of the IMTFE, she emphasised they were intended to have the same role as the IMT, “the transformation of post-war society through demilitarization

²⁵ ‘[The] eventual establishment of a peaceful and responsible government which...will support the objectives of the United States as reflected in the ideals and principles of the Charter of the United Nations.’ [Part I (b), *US Initial Post Surrender Policy for Japan*, http://www.ndl.go.jp/constitution/e/shiryo/01/022_2_002r.html]

²⁶ Boister and Cryer. *The Tokyo International Military Tribunal: A Reappraisal [The Tokyo IMT]*, (Oxford, Oxford University Press, 2008) p. 62.

²⁷ Ibid., at pp. 66-67.

²⁸ Ibid., at pp. 315-16.

²⁹ Madoka Futumara, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy*, (London, Routledge, 2008), p. 13.

and democratization, using as devices the pursuit of individual responsibility and the creation of an authoritative record of the war."³⁰ Further, Futamura also saw the IMTFE as strongly connected to occupation policies as they were "conceived within the framework of policies on the occupation of Japan."³¹ Overall, she argued that this was to be done by using the IMTFE in order to create an 'individualisation of responsibility' and by creating an historical record of events for study and reflection.³² This was done in connection with the occupation policies of demilitarisation and democratisation, and with the deliberate reproduction of the Nuremberg process and ideally to have the same impact.³³ Futamura also provides an interesting analysis of how different generations in post-occupation Japan have viewed and understood the IMTFE. Yuma Totani's *The Tokyo War Crimes Trial* provided some interesting discussion of the IMTFE in terms of understanding the roles and purposes of the trials. Her work was generally not focused on the issues of the interconnectedness between the tribunals and occupation reforms. However she did note some useful viewpoints from Japanese writers during the occupation itself³⁴, and analysis of Japanese scholarship on the IMTFE, exploring the shifts from early analyses (generally negative and nationalist in tone) to the more nuanced modern viewpoints (similar to those of more recent writers).

Other parts of the historiography on the IMTFE are spread among edited collections, conference proceedings, journal articles and the like. A recent collection of essays, *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited*³⁵, explores various issues around the IMTFE, and especially 'forgotten crimes' with the aim of moving beyond the question of whether the IMTFE was 'victor's justice' or not. However, most of the essays do not directly deal with the connections between the IMTFE and occupation that is the subject of this thesis. In terms of Japanese language scholarship, the translation of the record of a 1983 symposium on the IMTFE provide an interesting insight into how Japanese scholars have grappled with the issue of the purposes of the IMTFE. Ōnuma Yasuaki

³⁰ M. Futamura, *War Crimes and Transitional Justice*, p. 52.

³¹ Ibid., p. 55-56.

³² Ibid., p. 52.

³³ Ibid., p. 66.

³⁴ Y. Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II*, (Cambridge, Harvard University Press, 2008) pp. 190-207.

³⁵ *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited*, Y. Tanaka, T. McCormack, and G. Simpson (eds), (Leiden, Koninklijke Brill, 2011).

emphasised the importance of the educational role of the IMTFE; “The significance of the trials in demonstrating the tragedy and the horror of war to our generation and future generations with concrete factual evidence - what in a broad sense we may call their educational function - cannot be emphasized too strongly.”³⁶ Yet, other scholars took a more ‘orthodox’ line about the IMTFE arguing that it was ‘victor’s justice’ and simply about punishment or revenge.³⁷ One noted Japanese historian who has analysed the IMTFE is Awaya Kentarō³⁸, whose work from the 1980s and 1990s was part of a shift in scholarship taking a more nuanced view, criticising the IMTFE in terms of procedure, but understanding the trials as an important step in the emergence of a new Japan. Totani notes that initial Japanese analyses after the end of the occupation were generally those who were nationalist and ‘revisionist’ in nature and influenced Minear in his 1972 work.³⁹ The recent work of James Burnham Sedgwick on the IMTFE also provided useful analysis. His 2004 MA and 2012 doctoral theses both explored the IMTFE in the context of Western reactions to the IMTFE and the dynamics of the IMTFE as an institution.⁴⁰ The former emphasised that contemporary reactions to the IMTFE were far more involved than scholarly analysis has been since. The latter places the IMTFE as an institution into the context of the *zeitgeist* of internationalism in the aftermath of the Second World War. However, neither focuses directly onto the connections between the IMTFE and occupation and while these are discussed, they are not central.

³⁶ Ō. Yasuaki, ‘The Tokyo Trial: Between Law and Politics’ in *The Tokyo War Crimes Trial: An International Symposium*, ed. C. Hosoya, Andō N., Yasuaki, Ō, R. Minear, (Tokyo, Kodansha International Ltd., 1986) pp. 45-52 at p. 50.

³⁷ An example of this is Kojima Noburu, ‘Contributions to Peace’ in *International Symposium*, pp. 69-79; Hata Ikuhiko, ‘Comments by Hata Ikuhiko’ in *International Symposium* pp. 103-104.

³⁸ Awaya’s work is in many ways a synthesis of the ‘orthodox’ arguments, and the views expressed by Ienaga Saburō in the 1960s in his struggles to get his textbook published with the Ministry of Education in the 1960s – see Ienaga Saburō, ‘The Historical Significance of the Tokyo Trial’ in *International Symposium*, pp. 165-170.

³⁹ Y. Totani, *The Tokyo War Crimes Trial*, pp. 2-19.

⁴⁰ James Burnham Sedgwick, ‘Western reaction to Allied war crimes operations in the Far East, 1945-1951: apathetic and insignificant?’ (MA thesis, University of Canterbury, 2004) and *The trial within : negotiating justice at the International Military Tribunal for the Far East, 1946-1948* (PhD diss, University of British Columbia, 2012).

Historiography of the IMT

By comparison, the historiography on the IMT is more detailed and substantive to a point where the kind of specific analysis of the major works as above is not possible in the space available.⁴¹ However, there are similar issues with the historiography on the IMT as with that on the IMTFE. Great attention is given to the conduct of the trial itself and how it came to be, which is useful given that the emergence of the IMT was directly based on a moderate peace proposal made in late 1944. However, despite this there is often a neglect of the connections to the wider ideas and reforms of the occupation of Germany, and of activity in the US Zone. Scholars have also used these particular trials in order to explore the issues of the purposes of war crime trials as a part of a process of national reconstruction.⁴² In legal terms, Nuremberg is seen as one of the keystones of the modern international legal order and as such it has received a level of attention well beyond that devoted to exploring legal issues around the IMTFE. The analysis of legal norms emerging out of the Nuremberg trials remains at the heart of international criminal legal law, and the subject of innumerable books and articles devoted to exploring legal issues and ideas spawning from the Nuremberg period.⁴³

In terms of the Nuremberg trials themselves, there is a sense of a breakdown similar to that existing in Cold War historiography; 'orthodox', 'revisionist' and 'post-revisionist'.⁴⁴ Early accounts of the IMT tend to be supportive, connecting with a negative attitude towards the Soviet Union and its actions. Often they are basic narrative accounts of the trials and in some cases written by participants or direct observers (such as journalists). These accounts often focused on legal questions, explored whether the trials and the

⁴¹ The phrase IMT and Nuremberg trials are both used in this thesis. The IMT refers specifically to the trial of war criminals before the International Military Tribunal, while the latter phrase refers the IMT and to the series of trials conducted by the US from 1946-9.

⁴² I have used the phrase 'national reconstruction' as shorthand for the idea of the processes of reconstructing and reshaping a society after the end of military defeat and occupation in a war, the ending of a civil war or period of prolonged internal upheaval, or the ending in one way or another of an authoritarian/totalitarian regime.. There is of course links to the established concepts of 'transitional justice' however this concept is more concerned with the actual details of the processes themselves – for example the *Fragebogen* as a tool of political purging.

⁴³ A few examples include the collection *Perspectives on the Nuremberg Trials*, ed. G. Mettraux, (Oxford, Oxford University Press, 2008), S.R. Ratner and J.S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, (Oxford, Oxford University Press, 2001), *The Nuremberg Trials: International Criminal Law Since 1945 / Die Nürnberger Prozesse: Völkerstrafrecht seit 1945*, ed. H.R. Reginbogin, C.J.M. Safferling, (München, K.G. Saur, 2006).

⁴⁴ These are discussed further below.

indicted charges were justified, and examined the emerging international law of the period. Where they moved beyond legal analysis, they tended to align themselves with the orthodox school, for example, Eugene Davidson's analysis begins with a discussion of Allied-Soviet tensions that blames the Soviets.⁴⁵ There also tended to be a strong emphasis on punishment and on creating a historical record as noted by David Maxwell-Fyfe in Robert Cooper's account of the trials.⁴⁶

More critical assessments of the trials started to emerge in the 1960s, and were contemporaneous with the emergence of the 'revisionist' approach of Cold War historiography and of a younger generation of scholars. Ideas about Allied hypocrisy and victors' justice influenced the emerging criticisms that are evident in analyses from this period. It is no coincidence that this period saw more critical views towards Tokyo emerge, and contemporary political and social factors clearly shaped Minear's analysis. Another example in this category was Werner Maser, whose work 'Nuremberg in History' interestingly focused almost entirely on attacking the tribunal for the concept of criminalising aggression, its perceived procedural flaws, and its status as "not an international court but a victors' tribunal."⁴⁷ Another example of a revisionist approach was that of Bradley Smith, especially his 1977 work *Reaching Judgment at Nuremberg*. While this is somewhat *sui generis* in terms of typical 'revisionist' analyses in that it is not obviously connected to a particular view of the Cold War, Smith was scathing about the IMT. He argued that there was no fixed plan or policies before the trial, and that indeed the trial was nothing more than victors' justice.⁴⁸ Beyond this, he questioned their actual effect in any wider purpose, although this does imply he saw some wider purpose even in its utter failure.

⁴⁵ E. Davidson, *The Death and Life of Germany: An Account of the American Occupation*, (Columbia, University of Missouri Press, 1999 [originally published New York, Alfred A. Knopf, 1959]).

⁴⁶ R.W. Cooper, *The Nuremberg Trial*, (Harmondsworth, Penguin Books, 1947) pp. 7-9. This idea is also emphasised in E. Davidson's introduction in *The Trial of the Germans*, (Columbia, University of Missouri Press, 1966), p. 2.

⁴⁷ W. Maser, *Nuremberg: A Nation on Trial* [*Nürnberg: Tribunal der Sieger*], trans. R. Barry, (London, Allen Books, 1979), p. 279.

⁴⁸ B.F. Smith, *Reaching Judgment at Nuremberg*, (New York, Basic Books, 1977).

Recent accounts of Nuremberg have tended to be more comprehensive and nuanced and provide more contextualisation of the IMT.⁴⁹ In terms of law, they have focused on issues that are more abstract given that there has been greater experience with war crimes trials dealing with Yugoslavia and Rwanda. The focus still tends to be on the law as opposed to the history, but with a greater degree of contextualisation taking place. In terms of how the purposes of the IMT connected with the occupation, the main purposes that are usually discussed are denazification, re-education, democratisation and creation of historical record. While not all analyses include all of these purposes, overall they are generally accepted. The debate generally concerns their efficacy or in some instances their political motivation, but there is a consensus that the trials were intended to have at least some purpose beyond simply being trials of alleged criminals. An example of this more comprehensive approach is Hilary Earl's exploration of the Subsequent Nuremberg Proceedings where she argued these trials were part of "an American plan to punish members of the Nazi hierarchy and educate Germans...as well as to assist in the democratization and denazification of Germany."⁵⁰ Other accounts highlight particular purposes of the IMT, for example emphasising the importance of the rule of law or the role of the IMT in connection with denazification and creating a historical record.⁵¹

It is worth noting that the categorisation above is not a strict one, and analyses of Nuremberg and the occupation more generally crossed these timeframes. An example of this is Giles MacDonogh's 2007 book *After the Reich*, which is mostly a narrative of the period, but the perception of Nuremberg and its roles are particularly negative and cynical and more reminiscent of 'revisionist' scholarship.⁵² Others see the purpose of the

⁴⁹ A concise discussion of this shift in historiography, and of the trends generally, can be found in G. Pritchard, 'The Occupation of Germany in 1945 and the Politics of German History' *History Compass* 7 (2009) 447-473; Another useful article is K. Christian Priemel 'Consigning Justice to History: Transitional Trials After the Second World War' *The Historical Journal* 56 (2013) 553-581.

⁵⁰ H. Earl, *The Nuremberg SS-Einsatzgruppen Trial 1945-1958: Atrocity, Law and History*, (New York, Cambridge University Press, 2009) p. 2

⁵¹ D.W. Cassel Jr., 'Judgment at Nuremberg: A Half-Century Reappraisal' *The Christian Century* 112 (1995) 1180-1183 at 1182. This is by no means a comprehensive analysis, but it is useful in highlighting the various ways in which the trials are explored. This theme of rule of law is also emphasised by David Luban in D. Luban, 'The Legacies of Nuremberg' in Mettraux (ed.) *Perspectives on Nuremberg*, (New York, Oxford University Press, 2008), pp. 638-673. For denazification, see R. Bessel, *Germany 1945: From War to Peace*, (London, Simon and Schuster, 2009) as an example.

⁵² G. MacDonogh, *After the Reich: From the Fall of Vienna to the Berlin Airlift*, (London, John Murray, 2007); MacDonogh does make passing comments about purposes – in denazification and creating historical record, describing the process of denazification as a 'farce' [p.357] and citing the comments of

trials in similar ways to the earliest analyses that focused on justice and retribution.⁵³ Further, the narrative of Nuremberg is often still the same as that constructed early on with the IMT as a defining event in the post-war era. As Francine Hirsch notes, “still seen through the distorting lens of the Cold War...the classic account of the trials is an Anglo-American tale of liberal triumph...marking one of the “law’s first great efforts to submit mass atrocity to principled judgment” and ushering in a new era of international human rights.”⁵⁴ Other examples of this approach are found in Ann and John Tusa’s *The Nuremberg Trial* and Robert E. Conot’s *Justice at Nuremberg*, which generally follows the basic narrative of the IMT without any specific analysis of events beyond the IMT itself.⁵⁵

Historiography of the occupation of Japan

The historical approach towards the post-war occupation of Japan generally breaks down the 1945-52 period into several phases. The first phase from 1945-7 saw the most intensive and radical phase of reform. The demobilisation and abolition of the military, replacement of the constitution and new democratic elections, the removal of repressive and anti-democratic legislation were among the reforms implemented in this stage. John Dower described this phase as “the Americans impos[ing] a root-and-branch agenda of “demilitarization and democratization” that was in every sense a remarkable display of arrogant idealism.”⁵⁶ Hans H. Baerwald describes this initial phase as “an attempt to alter the political, economic, and social framework of a nation...during the reform stages of the occupation, Japan also served as a laboratory in which western ideas, institutions and methods were tested in the context of an Asian society.”⁵⁷

Justice Pal in talking about trials as a process of revenge [p.432]. Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice*, (London, Allen Lane, 1999), pp.193-211.

⁵³ See Michael Burleigh, *The Third Reich: A New History*, (London, Pan Books, 2001), pp.802-803

⁵⁴ F. Hirsch, ‘The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order’ *American Historical Review* 113 (2008) 701-730 at 701.

⁵⁵ A. and J. Tusa, *The Nuremberg Trial*, (New York, Atheneum, 1984); R.E Conot, *Justice At Nuremberg*, (London, George Weidenfeld & Nicolson, 1983). Both of these books do at least hint at the idea of wider purposes, but both make passing comments and focus on the narrative of the Trials.

⁵⁶ J. Dower, *Embracing Defeat: Japan in the wake of World War II*, (New York, W.W. Norton & Co., 1999), p.23.

⁵⁷ H.H. Baerwald, *The Purge of Japanese Leaders under the Occupation*, (Berkeley, University of California Press, 1959), p.1.

The second phase, which has generally been termed the “reverse-course” from 1947 began with the failure of the General Strike in early 1947 and took hold with the visit of George Kennan on behalf of the State Department in early 1948 which heralded the shift of policy to economic reconstruction.⁵⁸ This visit saw a shift in SCAP policy based on what Takemae argued were “US objectives in Japan from 1947 through 1949...[which] were primarily to deny Moscow a foothold there and keep the country out of the Soviet orbit.”⁵⁹ This period is often seen as dominated by both the emergence of the Cold War and a sense of conservative “backlash”, where labour reform was halted, and the focus of policies became economic recovery over political and social transformation.⁶⁰ Dower sums up the second phase as when the US “reversed course and began rearming their erstwhile enemy as a subordinate Cold War partner in cooperation with the less liberal elements of society.”⁶¹ Marius Jansen noted that shifting power balances within SCAP also influenced the change in policy, with ‘New Dealers’ becoming less influential and the Intelligence Section (G-2) of the Government Section (GS) of SCAP becoming more influential.⁶² This phase also saw the role of Japanese leaders and government become more important with SCAP taking an even more indirect role and ending with the negotiation of the final peace treaty in 1951, and the formal end of the occupation in 1952.⁶³ The 1950s saw Japan emerge as an important US partner in the region and this was re-emphasised by the major security treaty signed by the two states in 1960, in the face of strong domestic protests in Japan.⁶⁴

⁵⁸ One of the major unions in Japan had planned a general strike for 1 February 1947. In response, SCAP issued a directive outlawing general strikes the day before, and the union organization backed down. See Takemae Eiji, *Inside GHQ: The Allied Occupation of Japan and Its Legacy*, trans. R. Ricketts, S. Swann and J. Dower, (New York, Continuum Books, 2001), pp. 318-21, and pp. 457-485.

⁵⁹ *Ibid.*, p. 458.

⁶⁰ An example is Hata Ikuhiko, who clearly sees the ‘reverse-course’ as a consequence of events within the emerging Cold War; Hata Ikuhiko, ‘Japan Under the Occupation’ *Japan Interpreter* 10 (1975) 361-380 at 370-371.

⁶¹ Dower, *Embracing Defeat*, p. 23.

⁶² Marius B. Jansen, *The Making of Modern Japan*, (Cambridge, Belknap Press, 2000) p. 699. Willoughby and G-2 were more strongly anti-communist and right wing in their political views.

⁶³ Although the Ryukyu Islands and especially Okinawa remained under US administration until 1972, and the US still retains military bases on Okinawa and a number of locations around Japan (notably Yokosuka where the US Seventh Fleet is based, and the Sasebo and Kadena air bases).

⁶⁴ Sayuri Guthrie-Shimizu’s essay ‘Japan, the United States, and the Cold War, 1945-1960’ in *The Cambridge History of the Cold War: Volume 1*, (Cambridge, Cambridge University Press, 2010) pp. 244-265 gives a good summary of the relationship between Japan and the US in the period.

One important aspect of the Japanese occupation that is often emphasised is a stronger sense of continuity than in Germany. Despite the goal of reshaping Japan, there was a strong sense of continuity in government because unlike Germany whose government has essentially ceased to exist, and had been replaced by four Allied military governments in the occupation zones, the government of Japan continued to operate. Unlike Germany and despite the rhetoric of unconditional surrender, Japan's surrender in 1945 was more a result of negotiation by elements of the government than the result of total defeat and occupation. Japan itself was only occupied after the surrender as opposed to before, and those parts of government and administration not directly tainted by association with the military were generally left intact. Many of the Japanese officials involved in government during the occupation had been government officials before and even during the war, and were able to influence the course of reforms. There is an argument that the "reverse course" was pushed by conservative Japanese officials (especially Prime Minister Shigeru Yoshida⁶⁵), who then took primacy in the administration of Japan and used Cold War motivated fears to weaken their opponents on the Left.⁶⁶

Most scholars generally accept this basic framework⁶⁷, and where debate exists, it is about the motivations of the parties involved, the success and/or failure of the policies⁶⁸ and the impact of the emerging Cold War on the phases of occupation.⁶⁹ However, while the framework is similar to that of the IMT/Germany⁷⁰, the chronology of the historiography of the IMTFE and Japan is different. In some ways, the historiography is less developed and there is not the same sense of a strong 'post-revisionist' line of argument. Part of this comes from the fact that the occupation in general received little attention from scholars until the 1970s. An important reason for this was, as Moore noted, that the former Allied and Japanese governments only began declassifying records

⁶⁵ Prime Minister 1946-47, 1948-54.

⁶⁶ Some of these officials were in fact former Class A suspects.

⁶⁷ For example Moore uses a modified three-form framework of planning, initial stage, reverse-course [730-731]; R.A. Scalapino talks about 'punishment and reform, economic rehabilitation, proffered[sic] alliance' [The American Occupation of Japan: Perspectives After Three Decades *The Annals of the American Academy of Social and Political Science* 428 (1976) 104-113, at 107].

⁶⁸ Ian Buruma is especially critical of the first phase policies, see I. Buruma, *Inventing Japan 1853-1964*, (New York, Modern Library, 2003), pp. 129-144.

⁶⁹ Michael Schaller, *The American Occupation of Japan: The Origins of the Cold War in Asia*, (New York, Oxford University Press, 1985) takes a special focus on this area.

⁷⁰ In terms of a breakdown into contrasting phases which is explored below.

in 1973 and 1976.⁷¹ Other scholars argued that the pattern within analyses of the occupation (both contemporary and later) was one of initial criticism, and then approval of the actions of SCAP.⁷² Dower noted in 1975 that there seemed to be a split between European-language and Japanese scholarship. 'Standard' western scholarship followed a line that saw the 'reverse-course' as effectively benign and the consequences of the shift were minimized as based on practical rather than ideological reasons. This was contrasted with the radical Western and Japanese scholarship that put greater emphasis on Cold War politics and economic factors more broadly.⁷³ The Cold War also influenced Japanese scholars in other ways, with political and social divisions exacerbated by the reverse-course and Red Purge. Marius Jansen noted in particular that many intellectuals had been co-opted by the state, or had retreated into silence during the 1930s and 40s and that "intellectuals were determined not to make the same error a second time."⁷⁴ Marxist and progressive intellectuals, largely opposed to the conservative Yoshida and LDP governments, dominated the social sciences and humanities in particular.⁷⁵ Carol Gluck noted that a key group of historians were progressive intellectuals for whom "the term post-war historiography was virtually synonymous with Marxist history-writing." This was a group whose politics placed them "against the state, or in the larger sense, against the political and economic establishment."⁷⁶

Beyond this initial period in the 1970s, analyses tended to be a mix of writers who followed what Kramer describes as a 'narrative strategy' that tended to follow the 'standard' line described by Dower,⁷⁷ and toward the more multi-faceted approach that already existed within Japanese scholarship. This multi-faceted approach not only emphasised Cold War politics and economic factors, but also emphasised the importance of understanding the Japanese as actors. More recently, the cultural turn and the impact

⁷¹ R.A. Moore, 'Reflections of the Occupation of Japan' *Journal of Asian Studies* 38 (1979) 721-734 at 721

⁷² R.A. Scalapino, 'The American Occupation of Japan: Perspectives After Three Decades' at 105.

⁷³ J. Dower, 'Recent Japan in Historical Revisionism: Occupied Japan as History and Occupation History as Politics' *Journal of Asian Studies* 34 (1975) 485-504 at 490.

⁷⁴ Jansen, *The Making of Modern Japan*, p. 706.

⁷⁵ Ibid.

⁷⁶ Carol Gluck, 'The Past in the Present' in *Postwar Japan as History* ed. Andrew Gordon, (Berkeley, University of California Press, 1993) pp. 64-98, at 70.

⁷⁷ H. Kramer, 'Reforms of Their Own: The Japanese Resistance to Changes in Higher Education Administration under the U.S. American Occupation, 1945-1952' *Paedagogica Historica* 43 (2007) 327-345 at 328 [Kramer describes this idea as based in understandings like that expressed in MacArthur's memoirs – the far-reaching character of reform and of the primary role of US forces in deciding and implementing them].

of postcolonial approaches have shifted how the occupation has been analysed and understood.⁷⁸ These approaches have led scholars to explore the importance of the Japanese as active participants in the reform process. Laura Hein emphasises the need to understand that “the biggest fights in occupied Japan were among Japanese who wanted different futures for their society. They often pulled Americans into their battles in a variety of ways, but they were pursuing their own agendas.”⁷⁹ More recent literature around the occupation has also tended to be more critical the view of the occupation as “arrogant imperial venture” is a common theme.⁸⁰ John Dower’s *Embracing Defeat* leans towards this view as he critiques many elements of the US efforts. However, this is only a generalisation. In 2002, the reprint and expansion of Takemae Eiji’s *Inside GHQ: The Allied Occupation of Japan and Its Legacy* gave a more positive view of the occupation. Takemae was one of the major scholars behind the study of the occupation from the 1970s in Japan and viewed the occupation from a more supportive liberal perspective. In Takemae’s view, the occupation was successful in practical and ideological terms. While he certainly criticised elements of US activity, his work showed that radical Japanese scholarship was not unchallenged, and provided a useful counterpoint to largely negative narratives.

Overall, there is a sense that the literature on Japan has both taken a different path to that on Germany, but less developed. Much of the literature on the occupation of Japan views it through the lens of the Cold War, and sees the development of Japan as a future US ally. There also seems to be fewer general overviews of the occupation as a whole, with large parts of the literature comprising of focused studies on particular issues, rather than generalist overviews. In terms of general overviews, two recent works stand out in particular. Dower’s *Embracing Defeat* and Takemae’s *Inside GHQ* provide comprehensive and detailed analyses of the occupation from different viewpoints. However, both works only explore the IMTFE as one among many issues, and their exploration of the connections to the wider occupation is largely limited to political issues.

⁷⁸ Laura Hein, ‘Revisiting America’s Occupation of Japan’ *Cold War History* 11 (2011) 579-599 at 579. Hein highlights how the literature explores questions of agency and identity in a similar fashion to studies of colonial experiences, although questions whether Japan should be regarded as a ‘colony’ in the same fashion.

⁷⁹ Ibid., at 581. Examples of works which have highlighted this active role include Dower’s *Embracing Defeat*, and H.P. Bix, *Hirohito and the Making of Modern Japan*, (New York, HarperCollins, 2001) about the preservation of the imperial institution.

⁸⁰ Hein, ‘Revisiting America’s Occupation of Japan’, at 581.

Historiography of the occupation of Germany

The historiography of the occupation of Germany clearly links with that of the Cold War. In many cases, works analysing the occupation of Germany also explicitly or implicitly analyse the origins of the Cold War, given the central place of Germany in the Cold War. This is not to say that all works on the occupation are really about the Cold War, but that it is often one of the major contexts of analyses of Germany in the period both in terms of the subject matter and in the circumstances in which the writers were working. Cold War historiography is conventionally broken down with 'orthodox', 'revisionist', and 'post-revisionist' strains emerging at different points in time, and with different points of view. In Cold War scholarship, there is a tendency to focus on the breakdown of the Allied relationship in Germany and the emergence of the two Germanies as a key aspect in the outbreak of the Cold War.⁸¹ This means that the occupation has had an important place in exploring wider events and that the two have become interlinked in many respects. Jeffery Olick argues that in these narratives, the Nuremberg trials were "often seen as either an episode outside of history or a mere prelude to what came later."⁸² The narrative of the occupation also tended to be similar, even if the details were different. The story of the occupation is one of initial planning before the end of the war (generally the debate between Morgenthau and Stimson⁸³), an initial rush of ideas and plans put in place with idealistic goals, followed by a 'reverse-course' where these idealistic goals conflicted with both the realities of implementation and the politics of the emerging Cold War.

The early analyses of the occupation from the late 1940s through the 1960s were predominantly in line with the 'orthodox' historiographical approach towards the Cold War. This 'orthodox' approach emphasised the importance of political factors in the emergence of the Cold War and especially the division of Germany into West and East.⁸⁴

⁸¹ Hans-Peter Schwarz, 'The division of Germany, 1945-1949', *The Cambridge History of the Cold War: Volume 1*, pp. 133-153 provides a good overview.

⁸² Jeffrey K. Olick, *In The House of the Hangman: The Agonies of German Defeat, 1943-1949*, (Chicago, University of Chicago Press, 2005), p. 7.

⁸³ This is explored by a contemporary of these policy debates in T. Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir*, (New York, Alfred A. Knopf, 1992), pp. 3-56.

⁸⁴ A key example of the 'orthodox' approach is the works of Herbert Feis; *Churchill Roosevelt Stalin: The War They Waged and the Peace They Sought*, (Princeton, Princeton University Press, 1957); *Trust Before Terror: The Onset of the Cold War 1945-1950*, (London, Anthony Blond Ltd, 1970). An example of a more

In terms of dealing with the occupation specifically, early accounts tended to be written by those who were directly involved in the occupation administration itself, such as John Gimbel and Earl Ziemke.⁸⁵ There is also the argument in early accounts that a policy shift accompanied the demobilisation of the large armies that were present in the early occupation. Ziemke argued, "Germany had changed, and the rationale of the occupation had changed. The troops who had imposed the Allied will on the conquered country had gone home, as had all but a few of the military government officers and men who had accompanied them."⁸⁶ Interestingly, some writers shied away from emphasising political factors and the Cold War, as former US Military Governor Lucius Clay argued that the Cold War influenced the re-integration of the *BRD*, but overall had more to do with American ideals.⁸⁷ While it is arguable that Clay's statement was correct, it does at least show the idealistic streak that underpinned many US policies in both Germany and Japan. Early accounts also, as Thacker notes, dealt primarily with the execution and evolution of American policy, as analyses of the other zones were less developed if done at all.⁸⁸ This is partially because US records were comparatively easy to access and arguably because the orthodox approach placed primacy on the role of the US in the period.

The second category of analyses emerged from the mid-1960s as part of the 'revisionist' school. These 'revisionist' analyses explored economic issues in more depth and in political terms moved away from the 'orthodox' historiographical approach.⁸⁹ The basic premise of the 'revisionist' approach contended that the driving force behind the emergence of the Cold War was not Soviet actions, but in fact Allied actions and that in effect the Allies 'started' the Cold War. A particular aspect of this was the focus on the

recent work is that of N. Friedman, *The Fifty Year War: Conflict and Strategy in the Cold War*, (Annapolis, Naval Institute Press, 2000).

⁸⁵ See also the memoir of Lucius Clay, *Decision in Germany*, (New York, Doubleday, 1950).

⁸⁶ E.F Ziemke, 'Improvising Stability and Change in Postwar Germany' in *Americans as Proconsuls: United States Military Government in Germany and Japan, 1944-1952*, ed. R. Wolfe (Carbondale, Southern Illinois University Press, 1984), pp. 52-66 at pp. 61-62.

⁸⁷ L.D. Clay, 'Proconsul of a People, by Another People, for Both Peoples' in *Americans as Proconsuls*, pp. 103-113 at p. 103. Clay himself does not explain what these ideals are, but his attitudes resonate strongly with idealist and interventionist movements in US foreign policy.

⁸⁸ P. Biddiscombe, *The Denazification of Germany: A History 1945-1990*, (Chalford, Tempus Publishing, 2007), p. 10.

⁸⁹ A notable example is W.A. Williams, *The Tragedy of American Diplomacy*, (New York, W.W. Norton, 1972); see also the work of Thomas McCormick, such as *America's Half Century: United States Foreign Policy in the Cold War and After*, 2nd ed., (Baltimore, John Hopkins University Press, 1995); C. Eisenberg, *Drawing the Line: The American Decision to Divide Germany*, (Cambridge, Cambridge University Press, 1996).

German reparations dispute and the Marshall Plan as cynical attempts to undermine the Soviet Union, and that the Allies rather than the Soviets then caused the Cold War. Where analyses of this kind deal with political matters, they have a decidedly critical view of US and Allied policies. In terms of the occupation, where such analyses discuss the wider purposes of the trials, it is in the sense of an imposition of their own moral ideals, or an extension of their own selfish aims.⁹⁰ Revisionist historians also attacked occupation policies as misguided and/or simply cynical political tools. Denazification in particular was criticised in this way.⁹¹

The third category of analyses is the most recent, emerging in the 1980s and was strengthened especially with the ending of the Cold War in 1989-92 and the opening up of Soviet archives. Generally termed the “post-revisionist” approach, it takes a more nuanced stance than earlier understandings of the Cold War. The ‘post-revisionists’ emphasise that the Cold War was the result of actions of both the Allies and Soviets and was less the result of deliberate intent than of basic misunderstandings and actions/reactions based on these. Their approach is both a synthesis and rejection of the earlier approaches and generally is more comprehensive, taking in political, economic, and social factors.⁹² For the occupation of Germany, there is also the impact of the reunification of Germany in 1990, which allowed access to former GDR material and has opened up new avenues of study. Historical analyses of the occupation from this period are often more focused and explore issues previously unexplored. Examples include are the socio-psychological approaches taken by scholars such as Donald Bloxham and Jeffrey Herf in exploring how the Nazi past was and has been remembered in Germany.⁹³ Analyses of this type are more nuanced and explore a range of factors at play within the occupation of Germany.

⁹⁰ Revisionist arguments focus especially on the disputes over German reparations, the Marshall Plan and its perceived connections with long-standing American trade policies.

⁹¹ An controversial example of this is Tom Bower's *The Pledge Betrayed: America, Britain and the Denazification of Postwar Germany*, (Garden City, Doubleday, 1982).

⁹² Examples of the post-revisionist approach can be found in the work of John Lewis Gaddis, such as *The Cold War: A New History*, (New York, Penguin Press, 2005), and *We Now Know: Rethinking Cold War History*, (New York, Oxford University Press, 1997); Anne Deighton, *The Impossible Peace: Britain, the Division of Germany and the Origins of the Cold War*, (Oxford, Clarendon Press, 1990); Caroline Kennedy-Pipe, *The Origins of the Cold War*, (Basingstoke, Palgrave MacMillan, 2007).

⁹³ Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory*, (New York, Oxford University Press, 2001); J. Herf, *Divided Memory: The Nazi Past in the Two Germanys*, (Cambridge, Harvard University Press, 1997).

The purposes of the IMT are analysed in greater depth and more frequently than is the case with analyses of the IMTFE within the Japanese context. For the most part, the purposes of the IMT (and this is true throughout the literature) are more clearly stated and given greater attention than the literature on the IMTFE. Part of this is something of a self-fulfilling prophecy in that Nuremberg and the German occupation are seen as “more important”, so they have received greater scholarly attention, which creates a wider base of literature to work from, which in turn creates a perception of importance. For the most part, there is not really a sense of great difference between Nuremberg and Tokyo, as overall the aims and purposes were similar and the differences are in implementation and their success. An example is Thomas Berger’s point that the occupations had similar goals, in the sense of the basic aims of disarmament and remaking their societies.⁹⁴ Concerning the international tribunals, there are similarities and differences. In both cases, the US was the driving force behind the implementation of the tribunals and convinced and cajoled its major allies into support. However there were important differences, as while the IMT was built around some sense of partnership between the Allied powers, the US practically had a stronger role at the IMTFE because of its structure and composition. Scholars have noted and accepted that the driving force in making the trials happen at all was the US. Almost everyone who explores the wartime planning stages of Nuremberg and of the occupation highlights that the major debates over the trials were first internally within the US government, then amongst the Allied powers.⁹⁵ This meant that in many cases, the ideas behind the tribunals and the purposes that they were intended to play are shared between the German and Japanese context. Therefore understanding Nuremberg provides greater insight into the IMTFE. However, it is important that this should not be taken too far, as despite the US dominating the IMTFE on paper, an Australian judge who did not agree completely with the views of the US during the trial ran the tribunal, and the majority judgment was largely the work of the British, Canadian and New Zealand judges, and significant dissents from the Indian, Dutch, and French judges.⁹⁶ Beyond this, trials in general can be difficult to control as they

⁹⁴ Thomas P. Berger, *Cultures of Antimilitarism: National Security in Germany and Japan*, (Baltimore, John Hopkins University Press, 1998), p. 25.

⁹⁵ Maser discusses the “missionary faith in the trial’s educational effect” and that this “came from America” [Maser, *Nuremberg: A Nation on Trial*, p. 279].

⁹⁶ Boister and Cryer, *The Tokyo IMT*, p. 278.

play out. The intentions of those who plan them and the results they might want to see are not always those that actually occur. A prime example of this is the sheer length of time the proceedings of the IMTFE went on, when the likely intention was for multiple trials on the model of the Subsequent Nuremberg Proceedings. Nevertheless, the principles underpinning the IMTFE and the arguments and approach of the prosecution were in line with US ideas for the occupation. Nuremberg and Germany are ideal comparisons, as the experiences and ideas that went into that arena were transplanted for the IMTFE and Japan, but also because they were not exactly the same. Important differences existed between Germany and Japan, and exploring these differences as well as the similarities is part of this thesis.

There also exists a similar sense of initial economic aims that were later reversed or at least modified in both Germany and Japan – with the failure of the 1947 general strike in Japan and the explicit change in economic policy that came with Byrnes' 1946 speech at Stuttgart.⁹⁷ Overall, an examination of the historiography on both Nuremberg and Tokyo gives the sense that the purposes of both sets of trials within their respective occupations were generally similar – the differences are in the specific details and implementation of the policies.⁹⁸ Even where scholars are critical of the trials and their purposes, there is not a sense that the trials are viewed solely as vindictive punishment.⁹⁹ Inherent in criticism of the motivations behind Allied actions or of the results of said actions is the understanding that a wider purpose was present. The judges and prosecutors at the IMTFE understood their role in part as one of entrenching the IMT as precedent and building its contribution to international law. The judges in particular treated the IMT's judgment as an important authority.¹⁰⁰ In the case of both Germany and Japan, the war crimes trials were clearly more than simply tools of punishment, however the German context has been analysed in more depth than the Japanese context.

⁹⁷ This was an explicit restatement of policy – entitled "Restatement of Policy on Germany" which moved away from the economic policies stated in *JCS 1096* towards policies focused on rebuilding the German economy. An excerpt from this speech can be found in Appendix G, *Occupation of Germany: Policy and Progress, Department of State Publication 2783*, (Washington DC, United States Government Printing Office, 1947), pp. 165-169.

⁹⁸ This should be no surprise, given that participants in the planning of both occupations noted the similarities in the planning organisations from the very beginning – see H. Borton, 'Introduction' in *Americans as Proconsuls*, at p. 1.

⁹⁹ Bradley Smith is somewhat of an outlier in this regard.

¹⁰⁰ Boister and Cryer, *The Tokyo IMT*, pp. 302-3.

Conclusion

Overall, the historiography concerning the occupations of Japan and Germany has been strongly influenced by the historiography relating to the Cold War. In the case of the former, analyses of the occupation of Japan have often focused on the emerging Cold War in East Asia and the 'construction' of Japan as a key US ally in the region. Others look at the apparent American success in Japan in the light of later modernisation theory or the story of the success of American values in reshaping Japan. Historiography on the occupation of Germany has been influenced by the importance of the German question in European politics in the later 1940s, and the central place that Germany played in the outbreak of the Cold War, culminating in the Berlin Crisis and the emergence of the two German states on each side of the Iron Curtain. In other respects, the historiography of the occupations has been undertaken either through compartmentalised works that seek to provide a general overview and not focus on any one particular issue in detail, or works that are largely focused on another issue (such as the emergence of the Cold War) which discuss the occupations in some way. This is not to say that all of the historiography is really 'Cold War historiography', as many analyses explore the occupation as their primary focus.

The issue of the debates between moderate and harsh peace ideas and advocates is an important part of the historiography on the occupations, however these again are often compartmentalised on a particular reform issue, or more general without a great level of detail on underlying ideas. In particular, the international tribunals as a part of these debates is neglected, and if it is discussed it is usually in the context of the 1944/45 debates within the US government about harsh and moderate peace. Exploring the connections between the international tribunals and the concept of victimisation, and of moderate peace ideas is something of a lacuna that this thesis seeks if not to fill, then at least to start filling. The idea of the victimisation and victimhood of the occupied populations is sometimes mentioned, but how and why it was used is not necessarily explored in detail. More importantly, the interconnected of the reforms as a whole is often missed, as the narrative of the occupations becomes the story of the particular issue the author is focused on. Again, this is not a negative in itself, but it has influenced the

compartmentalisation of the narrative of the occupations. Common to both the historiography on the occupations and the tribunals is an imbalance between Japanese and German subjects. More ink has been spilled analysing and discussing the latter than the former for a variety of reasons; perceived importance, accessibility of materials, language barriers and the influence of other historiographical issues. This has meant that the occupation of Germany and the IMT is better understood and analysed, making it a useful companion and comparison to the analysis of the occupation of Japan and the IMTFE which is the primary focus of this thesis.

Chapter 2: “*Man hat uns belogen und betrogen*” — exploring the concept of the victim thesis

Introduction

“*Man hat uns belogen und betrogen*” meaning “they have lied to and betrayed us” was a phrase that encapsulates a commonly held attitude among the populations of occupied Japan and Germany. The conviction that they had been victimised by their former leaders was a powerful one in the aftermath of the war. The idea allowed the populations of Japan and Germany psychologically and morally to distance themselves from the former regimes. Victimisation was useful as an expression of resentment and anger against the former regimes for the suffering they had created through the war, and especially their defeat. The emergence and life of this concept of victimisation in the defeated states has been analysed by others from the perspective of the defeated populations. However, the victimisation idea in the Allied consciousness has remained largely unexplored.

The idea of victimisation was also important in the reconstruction process in allowing people to move on from the trauma of the past to begin rebuilding their lives and communities. However, this idea of the victimisation of the Japanese and German populations by their former regimes was not just a concept believed by those populations. The concept was also utilised by those who planned and implemented the occupations of Japan and Germany. More importantly, it was an idea most strongly held within the US government and occupational regimes that are the focus of this thesis. While elements of this idea were held by the British and Soviet occupation regimes (the latter in the sense that the people had been victims of a connected *NSDAP*-capitalist elite), it was largely rejected by the French. Thus, the idea of the people as the victims of their former leaders, or the ‘victim thesis’, was most important for the US and used as part of the justification for the international tribunals in the form that they took. The victim thesis connected with the conceptualisation of the former regimes proposed by moderate peace advocates as dominated by ‘leadership cliques’. In this idea, the criminality of these regimes and the culpability of their members should be more narrowly focused than the collective guilt and punishment proposed largely by harsh peace advocates. For US officials, the victim thesis was based on several motivations and applied in several different ways, with a rough division between practical and ideological motivations and

applications. This was a fluid division as the 'practical' and the 'ideological' were not exclusive categories. The victim thesis had important impacts on many areas of reform proposed and implemented by the US in Japan and Germany, and in the entire US approach to dealing with their former enemies. In one sense, the international criminal tribunals were fundamentally based on the victim thesis, as the idea of the leadership conspiracy was how US Secretary of War Henry Stimson sought to parry the proposals of the Treasury Secretary Henry Morgenthau Jr. in his infamous 'Morgenthau Plan'. The Plan proposed a harsh political and economic peace settlement that Stimson opposed, offering a trial of German leaders as an alternative.

This chapter will first define and explain the victim thesis. Second, it will explore its genesis and use in the international tribunals. Third, it will analyse the victim thesis in terms of the planning and implementation of one of the key reforms undertaken in the occupied countries through the processes of political purging. These processes (such as the process of denazification in Germany) were one of the major 'negative' reforms implemented to fulfil all three of the major objectives through various methods.¹⁰¹ Political purging processes were constructed around the idea of the victim thesis, and while these processes involved significant numbers of individuals in both states, the majority of those punished received lighter punishments (if any at all). The international criminal tribunals were unusual in the severity of the punishments imposed, providing an interesting contrast to other political purging processes. The political purging processes were a vital step in realising the major objectives of demilitarisation, democratisation, and deradicalisation through removing and punishing those elements of politics and society responsible for the crimes of the former regimes, and for creating the circumstances that made the regimes possible.

The victim thesis at its simplest was the idea of the Japanese and Germans as the victims of their leaders, just as the populations of Axis-occupied territory were victims. The idea implicitly made the Japanese and Germans the first of the victims of the militarist and *NSDAP* regimes when they created and maintained their power before moving towards aggressive expansionism and the crimes committed during the wars from 1937 and 1939

¹⁰¹ The methods of political purging ranged from the trials of major offenders (and executions of some of these), through to fines or termination of /barring from future employment.

respectively. The victim thesis was an important part of arguments for advocating moderate peace settlements with Japan and Germany and justifying more moderate reforms and punishment. Essentially, if the people as a whole were victims, then policies aimed at punishing the people as a whole were undesirable (if not harmful). Conversely, true guilt lay not with the people as a whole but with their leaders and those organisations and institutions that had supported them. Importantly however, the victim thesis was applied differently in each occupied state and this had important consequences. As an example, in Japan the military was the key institution implicated in victimising the people as a whole. However, in Germany while militarism was perceived as one of the key problems, and the institutions of the military were attacked by Allied reforms, the *NSDAP* was considered the key institution that had engaged in victimisation. Military personnel and officers especially were not treated in the same manner (barring those accused of specific war crimes.) The idea developed about the basic honourability of the *Wehrmacht* that contrasted the 'clean' military with the 'dirty' paramilitary organisations (especially the *SS*).

The genesis of the victim thesis

The victim thesis emerged gradually during the planning for the occupations of Japan and Germany within the US government during the war. In both cases, the idea was contested and other theories and plans for the occupations had an important influence over the occupations themselves. The victim thesis as it emerged in the occupations and tribunals was the product of debate among different factions within the US government, and between the Allied powers. Those who argued the victim thesis were also not a monolithic group, as different officials and groups made arguments about victimisation for different reasons and on different bases. The arguments about victimisation were not always consistent with one another or even internally consistent at different points in time. Nevertheless, it is possible to speak of advocates who argued for the idea of the victimisation of the people because they held particular views about how the occupations should be conducted, whether their reasons were practical, political, and ideological or a mixture of all of these.

Japan

Concerning Japan, the victim thesis emerged largely through pre-surrender occupation planning discussions within the US government during the war. These discussions concerned many issues, but at their core were concerned with the question of whether Japan should be treated harshly or more moderately after the war was over. This debate was not just about Japan, but also the political situation in the Asia-Pacific region after the war. The factions in the debate over Japan have been termed by scholars the 'Japan Crowd' and the 'China Crowd'. The former were primarily those who advocated for a moderate peace, but importantly also advocated less wide-ranging reforms. As an example, this group tended to favour retaining the Emperor even if the Imperial institution was to be reformed. The latter group were those who tended to favour harsher treatment of Japan, with more stringent political, social and economic reform and some within this group (hence the phrase 'China Crowd') held the view that China under the *Kuomintang* regime was to be the new power in the region backed by the US.¹⁰² These groups represented factions within the State and War Departments that at various points during pre-surrender planning and the occupation itself dominated policy-making and implementation. Despite this back and forward departmental infighting, it seems clear that in terms of the trials, the idea of Japan as victim encouraged by proponents of a lenient peace won out. The positions held were not always consistent and nor was the victim thesis propounded consistently by its advocates. The changes and differences in arguments were often the product of political positioning or framing arguments for particular audiences and circumstances, as advocates (logically) sought to make arguments that would gain acceptance from their political leaders. This meant that the victim thesis as it emerged in the reforms and tribunals was not necessarily the same as it was during planning discussions, nor was there a single evolutionary path.

The pre-surrender planning stage was important because it was the genesis of the key post-war documents, the *Potsdam Declaration*, *SWNCC 150/4/A*, and *JCS1380/15*. More importantly, despite the rhetoric of MacArthur and his supporters, MacArthur operated

¹⁰² Useful brief summaries of these positions are found in the introductory sections of M. and S. Harries, *Sheathing the Sword: The Demilitarisation of Japan*, (New York, MacMillan, 1987), pp.xxi-xxii; and E. Takemae, *Inside GHQ*, pp. 202-3. Not all of those pushing for harsher peace terms and more drastic reform necessarily also backed the idea of Nationalist China as the new regional power, but the term is useful shorthand.

(at least initially) based on pre-determined policies. Further, as Mayo argues, “General MacArthur’s role and that of his general staff in planning the initial goals of the Allied occupation of Japan were minimal...however much he chafed at guidelines and restraints, [he] largely complied with his JCS orders in the opening stages of the occupation.”¹⁰³ The structure of pre-surrender planning followed the basic chronology set out by Mayo. The first stage from 1942-43 involved research and the production of preliminary position papers in which a general framework for dealing with defeated enemy states was conceived. The second stage from late 1943 to the end of 1944 saw heavier involvement of State Department staff and more detailed planning, but also rifts emerging between political and economic planners. There was also growing influence from the War and Treasury Departments from this stage of planning onwards, and these departments generally favoured a harsher peace. The third stage in 1945 saw the establishment of the State-War-Navy Coordinating Committee (SWNCC) with regular meetings, and the political solutions of the Japan Crowd gained acceptance, but more widely ranging reforms were also added to plans. By the last months of the war however, military and naval planners took charge and the China Crowd’s ideas gained more influence.¹⁰⁴

Two key players within pre-surrender planning make for interesting case studies. Both George Blakeslee and Hugh Borton were part of the early planning body with the State Department from 1941 (the Division of Special Research) and had similar backgrounds in academia and working experience in Japan during the 1920s and 1930s. Borton is especially interesting because he was present during the key events of the prosecution narrative outlined above, and his understanding of Japan was based on a contrast of ‘good *Taishō* 1920s’ with ‘bad *Shōwa* 1930s’. Mayo suggests this was “an interpretation of modern Japanese history which would have profound influence on planning for the occupation and on postwar American studies.”¹⁰⁵ Borton’s 1940 work on Japan between 1931 and 1940 is also interesting, as his characterisation of the period is similar to that of the prosecution in focusing on growing military control of government and the state. In Borton’s description of the situation in 1940, “they [the militarists] have so permeated the present structure of government and have so effectively perfected control measures

¹⁰³ M.J. Mayo, ‘American Wartime Planning for Occupied Japan: The Role of the Experts’ in *Americans as Proconsuls*, pp. 3-51 at p. 4.

¹⁰⁴ *Ibid.*, pp. 7-9.

¹⁰⁵ *Ibid.*, p. 14.

in all phases of life that their displacement would involve the overthrow of the whole political structure.”¹⁰⁶ Blakeslee and Borton were involved in various State Department planning bodies from 1942 and they both argued from similar positions. This position was generally focused around this sense of ‘good 1920s/bad 1930s’ and argued that there was a group of Japanese moderates and liberals who would take responsibility for reform once the militarists were removed. In late 1943, the second stage of planning began with the establishment of a State Department committee with Blakeslee as chair and Borton as secretary.¹⁰⁷ Many of their recommendations developed into basic post-war policies. In a May 1944 paper, Blakeslee reaffirmed post-war objectives in Japan as demilitarisation, democratisation and reintegration, and argued that militarists were to be removed from the scene as a necessary step in this process. Permeating throughout their ideas is an undercurrent of the victim thesis in the idea of moderates and liberals being pushed aside, and militarism being to blame for the war — and resulted in their view that removal of the militarists was the key rather than radical reform.¹⁰⁸

These ideas were challenged in the planning process and other groups within the State Department and from the War and Navy Departments that held harsher views of the intended occupation. One contrasting group was the Civil Affairs Division (CAD) in the State Department. In October 1943, they published a set of policy recommendations calling for the arrest and trial of a large swathe of the top levels of government in Japan, including the Emperor. In economic terms, they pushed a radical dismantling of the *zaibatsu* and an economic plan that was not far off the enforced agrarianism of the Morgenthau Plan. CAD was the source for *JCS 1067* in relation to Germany and Takemae argues that the Morgenthau Plan influenced the drafting of the Army’s policy directives in *JCS 1380*.¹⁰⁹ In the end, the post-war surrender policies were an amalgam of ideas from both camps. The final product of *SWNCC150/4/A* contained ideas from both Japan and China Crowds with the intention of more radical reforms than the Japan Crowd might have wished, but importantly the core of the political objectives taken from their pre-surrender planning papers. *SWNCC150/4/A* emerged in an initial form by June 1945, and Mayo argues this drew heavily from the State Department work of men like Blakeslee and

¹⁰⁶ H. Borton, *Japan Since 1931* (New York, Institute of Public Relations, 1940), pp. 126-127.

¹⁰⁷ The Interdivisional Area Committee on the Far East (IDACFE).

¹⁰⁸ Mayo, ‘American Wartime Planning for Occupied Japan’, pp. 30-32.

¹⁰⁹ Takemae, *Inside GHQ*, p. 212.

Borton, and the addition was the intention of removing “flagrant exponents of militant nationalism and aggression.”¹¹⁰

Germany

Like Japan, the thesis of the German people as victims emerged through planning discussions with the US government before the surrender in 1945. This debate was more complex and confrontational than that over Japan where the soft-peace advocates largely won out in planning. Importantly although in hindsight the occupation of Germany was peaceful, Allied planners feared mass civil unrest and continued resistance. The increasingly fanatical resistance of the *Wehrmacht* and *SS* in late 1944 and the fear of mass resistance from the civilian population coupled with increasing knowledge of Nazi atrocities promoted a sense of Nazism as something to be destroyed and that the occupation potentially should be harsh. Field Marshal Montgomery put it to his troops that the Allied occupation “was an act of war” and its object was “to destroy the Nazi system.”¹¹¹ The general narrative of the debate over the post-war treatment of Germany focuses on the debate between Stimson and Morgenthau and their purported visions for the future Germany. Stimson emphasised economic rehabilitation and “firm but flexible policies that would neutralise the Nazi danger but allow Germany to get back on her feet.”¹¹² Morgenthau emphasised a “rigorous post-war treatment of Germany, dismantling of all war-related industries, total decentralisation, and even Germany’s forced downgrading into a purely agrarian state.”¹¹³ The key moment of this debate was September 1944 when an Allied victory looked both imminent and inevitable with the success of the Normandy landings and the rapid liberation of France after two months of attrition in Normandy. By this point, several departments¹¹⁴ in the US government had

¹¹⁰ *POLITICO-MILITARY PROBLEMS IN THE FAR EAST: UNITED STATES INITIAL POST-DEFEAT POLICY RELATING TO JAPAN*, 11 June 1945 (SWNCC 150/4/A), Section III (7).

¹¹¹ T. Thacker, *The End of the Third Reich: Defeat, Denazification & Nuremberg January 1944 – November 1946*, (Stround, Tempus, 2006), p. 17.

¹¹² F. Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany*, (New York, Bloomsbury Press, 2011), p. xxx.

¹¹³ *Ibid.*

¹¹⁴ Several US government departments had input and interest into planning discussions for the occupation of Germany. The three most influential were the War, Treasury and State Departments (the first being the military who would operate the occupation, the second concerned with economic issues but whose head in 1944 was a key harsh peace advocate [Morgenthau], and the last being concerned with diplomacy and generally more moderate). Two others had some influence, with the Justice Department being involved with legal issues and punishment of war crimes, and the OSS with its intelligence and research groups.

immediate or potential concerns with the issue of post-war treatment of Germany, however initially the War and Treasury Departments were the most involved and a confrontation emerged between their chiefs Stimson and Morgenthau. Taylor described Treasury as a “citadel of the “tough peace” advocates...known primarily for its proposal to abolish German heavy industry.”¹¹⁵ Treasury also advocated for summary execution of identified war criminals as opposed to trials, and more radical political and social reform. Morgenthau drafted his famous Plan during September 1944, and having got the ear of Roosevelt was able to make a presentation of this during the Quadrant Conference at Quebec in September 1944, ostensibly gaining the approval and agreement of both Roosevelt and Churchill. However, news of the Morgenthau Plan quickly leaked to the press, which became highly critical of the Plan. When the scandal became part of the 1944 presidential election campaign, Roosevelt backpedalled on support when attacked by Republicans arguing that the Plan was utilised by the Nazis to spur continuing resistance.

Stimson and War, along with Secretary of State Hull and the State Department, worked hard to change Roosevelt’s mind, primarily focusing on the impracticality of the economic aspects of the Plan. Stimson’s 5 September 1944 letter to Roosevelt argued

I cannot...treat as realistic the suggestion that such an area in the present economic condition of the world can be turned into a non-productive "ghost territory" when it has become the centre of one of the most industrialised continents in the world, populated by peoples of energy, vigour and progressiveness.¹¹⁶

More importantly, Stimson contended, “Such a program would, I believe, create tensions and resentments far outweighing any immediate advantage of security and would tend to obscure the guilt of the Nazis and the viciousness of their doctrines and their acts.”¹¹⁷ Stimson’s solution to the dilemma was not radical economic reform, but focused political reform especially around trials and political purging. He argued that it was

primarily by the thorough apprehension, investigation, and trial of all the Nazi leaders and instruments of the Nazi system of terrorism...that we can demonstrate the abhorrence which the

¹¹⁵ Taylor, *The Anatomy of the Nuremberg Trials*, p. 34.

¹¹⁶ *Letter from Stimson, 5 Sept 1944.*

¹¹⁷ *Ibid.*

world has for such a system and bring home to the German people our determination to extirpate it and all its fruits forever.¹¹⁸

This effort was supported by Hull and the State Department, whose plans for post-war Germany focused on economic rehabilitation to help foster European economic recovery.¹¹⁹ Despite stepping back from implementing the more radical parts of the Plan, much of the rhetoric of the Plan still had currency within the administration and occupation planning, and the unresolved tension remained in Allied planning.

However, this debate did not occur in isolation, as Allied thinking and planning took place in a milieu of debate over the nature of the Nazi regime and the proper solution to dealing with the perceived problem. An interesting part of the debate emerged from a research group within the Office of Strategic Services (OSS) tasked with drafting papers on German society and government. The OSS group included several German *émigré* social scientists and historians who had fled Germany in the 1930s including several scholars of what became the Frankfurt School such as Herbert Marcuse, Otto Kirchheimer and Franz Neumann. Olick also highlighted the importance of the Joint Committee on Postwar Planning, supported by a range of professional associations and included a whole range of social scientists.¹²⁰ This group emphasised 'scientific' and sociological arguments about the nature of German society, and argued for a 'psycho-cultural' approach and the possibility of successful re-education.¹²¹ Neumann helped to develop one of the first theoretical formulations of Nazism in his 1944 work *Behemoth*.¹²² Neumann's analysis of Nazism was that it was a diffuse virus-like phenomenon, as opposed to a top-down structure imposed by the leadership on a passive populace. Further, the Third Reich was a political grouping with four centres of power loosely coordinated by Hitler, who ruled by his charismatic authority. These four groups of the *NSDAP*, *Wehrmacht*, civil service and capitalist business elite were effectively the roots of Nazism and needed to be reformed in order to successfully redeem Germany. For Neumann and the Frankfurt School, Nazism was "a form of false-consciousness and inevitably an anti-Nazi reaction of

¹¹⁸ Letter from Stimson, 5 Sept 1944.

¹¹⁹ See Olick, *In the House of the Hangman*, pp. 65-70

¹²⁰ Olick, *In the House of the Hangman*, at pp. 58-63

¹²¹ An important thinker was Richard M. Brickner and his works *Is Germany Incurable?* (Philadelphia, Lippincott, 1943); and 'Germany after the War – Round Table 1945.' *American Journal of Orthopsychiatry* 11 (1945) 381-441.

¹²² Franz Neumann, *Struktur und Praxis des National sozialismus 1933-1944*.

progressive forces would occur.”¹²³ However, the OSS group theorised that an occupation might effectively freeze the social situation and prevent the anti-Nazi reaction occurring, so their practical solution was in line with American idealism and not overly draconian. Biddiscombe describes their solution as to “remove the repressive weight of the Nazi party and its placeholders, which would allow a flowering of opposition and support a process of creative renewal.”¹²⁴ The OSS group’s solution was essentially denazification; although their initial proposal was modified by G-5 based on impracticality. For the OSS group however, the ultimate goal was social revolution, as they understood this as necessary to destroy the power of Nazism.

Another alternative was what Walter Dorn called “the outlaw theory of National Socialism” where criminal trials and political purges would be sufficient to deal with the core of the problem. These would be based on individual responsibility and degree of complicity in the crimes of the regime.¹²⁵ The outlaw theory was essentially the genesis of the Nuremberg trials and most clearly outlined in the 22 January 1945 memorandum to Roosevelt. It is also the theoretical structure of the Nazi regime most contingent with the victim thesis, and arguably in hindsight the one essentially applied to Germany during the occupation. This is likely for several reasons, as practically it required less intensive intervention in German society than the OSS group’s solutions, and thus was the easiest to implement. This outlaw theory meant that rather than punish the population as a whole, it would be proper to punish only the ‘outlaws’, and implicitly rejected radical political, economic, and social reforms. The idea also aligned with the views held by Stimson and the War planners in their efforts to combat the Morgenthau Plan. The Plan fitted most closely in with ideas of German collective guilt for the Nazi regime and its actions. The Morgenthau Plan is often placed in this camp, although Olick argues it was a mix of collective guilt doctrine and the social revolution proposed by Neumann.¹²⁶ The collective guilt idea was one that held strong currency during the war itself, where public opinion in both the United States and Britain regarded German society as the true source of the problem. A counterpart of Morgenthau in Britain, Lord Vansittart, argued for the

¹²³ Biddiscombe, *The Denazification of Germany*, p. 22.

¹²⁴ *Ibid.*, p. 23.

¹²⁵ Walter L. Dorn, The Debate over American Occupation Policy in Germany 1944-1945 *Political Science Quarterly* 72 (1957) 481-501 at 484.

¹²⁶ Olick, *In the House of the Hangman*, p. 91.

destruction of German industrial hegemony and a prolonged military occupation to enforce *Umbildung* or re-education of German society.¹²⁷

The use of the victim thesis in the tribunals

The victim thesis was primarily used in the international tribunals was primarily through the indictments and how the Allied prosecutors constructed their narratives of the regimes of which the accused were a part, and how they constructed the cases against the individuals. The idea was evident at both the IMTFE and the IMT and utilised by the prosecution in making their arguments. During the IMTFE, the prosecutors made important use of the ideas of ‘Japan as victim’ or ‘the Japanese as victims’, and these ideas also emerged in the IMTFE’s majority judgment. Joseph Keenan in delivering the Opening Statement of the Prosecution stated, “We must reach the conclusion that the Japanese people themselves were utterly within the power and force of those accused, and to such extent were its victims.”¹²⁸ An important aspect of the construction of the conspiracy argument centred on the portrayal of the ‘leadership’ or ‘militarist’ groups victimising the people of Japan in various ways. Futamura argued that “the tribunal intended to demarcate wartime leaders and other Japanese people not only physically but also psychologically,”¹²⁹ and throughout the trial, there was a clear and deliberate attempt by the prosecution to create a distinction between the accused and the Japanese people as a whole. The primary method of doing so was through application of the victim thesis in two forms, with the Japanese people victimised by how the conspirators were accused of taking power, and how the conspirators (once in power) maintained their control. The victim thesis was most evident in three parts of the prosecution arguments and narrative. The first focused on how the conspirators had undermined and intimidated ‘democratic’ civilian governments of Japan through threats of and actual violence. The second focused on the roles of propaganda in aiding this process, and especially as a tool of maintaining control over the population. The third focused on education in similar contexts. As an example, the arguments around the undermining of democratic governments will be

¹²⁷ Dorn, ‘The Debate over American Occupation Policy’, 484.

¹²⁸ MB 1549, *Justice Erima Harvey Northcroft Tokyo War Crimes Trial Collection* [Northcroft Collection], Item ID112493, *Opening Statement of the Prosecution*, delivered by Joseph B. Keenan, p. 52.

¹²⁹ M. Futamura, *War Crimes and Transitional Justice*, pp. 56-57.

examined in more detail, as propaganda is not specifically analysed in this thesis, and the issue of education is the subject of Chapter 5.

The IMTFE

The theme of the erosion of democratic civilian governments was an important part of the prosecution arguments and the judges who handed down the majority judgment. Language describing the Japanese people as ‘dominated’, ‘indoctrinated’, and even ‘enslaved’ is common throughout the prosecution submissions and majority judgment. Part of the prosecution’s final address was the statement ““We have learned through the events how completely the people of Japan had been dominated and enslaved...The record in the case clearly proves that Japan needed to defend itself not against from forces without [sic], but from the evil, malignant and ruthless elements in the heart of its capital.”¹³⁰ The prosecution further contended “It is only when they [the people of a nation] are regimented and oppressed and enslaved themselves and lose control of their governments that these aggressive wars occur.”¹³¹ The factual narrative put forward by the prosecution placed particular attention on internal events and turmoil within Japan in the 1930s to show how the accused had taken control of the Japanese state through insubordination, intimidation and violence and in a position by 1936-7 to govern Japan. The basic plotline of this narrative was to show that ‘assassinations and threats of revolt enabled the military branch more and more to dominate the civil government and to appoint new persons favourable to them and their policies.’¹³² Particular attention was paid to the 1931-6 period, as this was the period when the conspirators gained control of the government of Japan, before launching into the aggressive wars aimed at China, the Soviet Union and the Western Powers in turn. The prosecution argument was that through a series of events, the conspirators undermined the ability of civilian leaders to resist their objectives, and placed themselves into power. There was a special focus on several ‘key’ events in 1928, 1931, 1932 and 1936: the assassination of Chang Tso-lin in 1928, the ‘March 15th’ Incident, and the Mukden Incident of 1931, the assassination of Premier Inukai in May 1932, and the failed military coup in the 2.26 (26 February) Incident in 1936. As well as these particular events, several other instances of the military

¹³⁰ MB 1549, Northcroft Collection, Item 112438, *Final Addresses: Volume 1, Prosecution Sections A-E, Transcript Pages 38949-39325, Summation of the Prosecution, Section A*, p. 11.

¹³¹ *Ibid.*, p. 16.

¹³² *Ibid.*, p. 36.

influencing civilian government decision-making were discussed, but despite this, the major focus was on the key events. While in part this reflected the issue of trying to make a clear narrative, it did little to explain what occurred between or around these key events. The focus on moments of crisis masked the gradual nature of the 'militarisation' of Japanese government and society over a longer period. It also painted an image of antagonism between militarist conspirators and the civilian governments, whereas the reality of their relationship was far more complex and murky. The civilian governments were not necessarily opposed to some of the goals of the militarists, rather the means and timing of these actions and to their acts of *gekokuujō*.¹³³

The assassination of Chang Tso-lin (the warlord ruling Manchuria, 1922-8) in a bomb attack on 4 June 1928 by the Kwangtung Army was an early attempt by the military to encourage Japanese intervention in Manchuria. The region was under the control of Chang, a Japanese-friendly warlord previously, but the Kwangtung Army began to see him as problematic to deal with. The hope was that this would prompt the government in Tokyo to order an occupation, however no order came and the plot collapsed.¹³⁴ Despite this failure, it showed clear intention. The prosecution argument called this event "the first overt act by the Army to project itself into the formulation of government policy."¹³⁵ Further, this was the first example in the narrative of a common militarist tactic by causing the collapse of cabinets opposed to their policies and/or who would not act along with the militarists' aims. Okada testified that Tanaka, Hirohito and War Minister Shirakawa agreed on disciplinary action for those involved, but strong opposition from the General Staff forced a collapse in support for the government and Tanaka resigned in July 1929.¹³⁶ The March 15th Incident was relatively minor compared to other events mentioned, however together with the assassination of Chang Tso-lin provided something of a precursor to later events and examples of how the conspirators operated.

¹³³ 'lower overcoming higher'. This idea emerged in 15th-16th century Japan with political leaders being overthrown by subordinates, see Thomas Conlon, 'Instruments of Change' in *War and State Building in Medieval Japan* (Stanford, Stanford University Press, 2010), 124-158, at 149. In this context, the idea is one of junior officers acting without orders and presenting superiors with a *fait accompli* they had little choice but to accept.

¹³⁴ Hata Ikuhiko and Alvin D. Coox, 'Continental expansion, 1905-1941' in *The Cambridge History of Japan Volume 6: The Twentieth Century*, (Cambridge, Cambridge University Press, 1989), pp. 271-313, at p. 288.

¹³⁵ *Final Addresses: Volume 1, 2. The Conspiracy to Obtain Domination of the Asiatic and Pacific Areas*, Section D, D-19.

¹³⁶ *Ibid.*, D-19.

The *Sakurakai* (Cherry Blossom Society) had been set up by the accused Hashimoto in 1930 with the purpose of “national reorganisation for the attainment of which the Society was ready to use armed force.”¹³⁷ Hashimoto planned the takeover of the government through the instigation of massive riots in Tokyo (with the aid of civilian ultranationalists such as the co-accused Ōkawa) that would necessitate the mobilisation of troops and proclamation of martial law and allow a military coup.¹³⁸ However, the War Minister and planned new Prime Minister Ugaki Kazushige refused to cooperate with the plan and the plotters were arrested.¹³⁹ The prosecution emphasised the plan of the *Sakurakai*¹⁴⁰ as a precursor to later attempts to undermine and overthrow uncooperative civilian governments. This coup never eventuated, but the mere threat of it was enough to influence government officials, and that the *Sakurakai* existed and was known to be planning such action was a dangerous sign.

The Mukden Incident in September 1931 initiated the Japanese occupation and invasion of Manchuria and was from the prosecution’s point of view the first key step of Japanese aggression in the path to the war in China and the Pacific War. The Incident was also another key moment of *gekokujo* with Kwangtung Army officers operating without orders and the civilian governments essentially forced to follow through fear of a potential coup. Key individuals involved within the Kwangtung Army included the accused Itagaki Seishiro and Doihara Kenji who sought to create an excuse for Japanese intervention in Manchuria by faking an attack on the Japanese owned South Manchuria Railway on 18 September 1931.¹⁴¹ However, the Wakatsuki government at the time sought rapprochement with the Kuomintang regime in Nanjing and sought to contain military operations, as did central military authorities. The Kwangtung Army ignored this policy and continued operations in Manchuria until the collapse of the Wakatsuki government, whose successor accepted the occupation of Manchuria. The prosecution introduced as an exhibit excerpts from Kido’s diary from the period, where Kido noted

¹³⁷ *Final Addresses Volume 2*, D-21 and 22; Ex. 162, T. 1554-5.

¹³⁸ Meirion and Susie Harries, *Soldiers of the Sun: The Rise and Fall of the Imperial Japanese Army*, (New York, Random House, 1994), p. 147.

¹³⁹ *Ibid.*

¹⁴⁰ The *Sakurakai* or ‘Cherry Blossom Society’ was founded by military officers, General Staff members and the Office of Inspector-General of Military Education under the accused Hashimoto Kingoro in October 1930.

¹⁴¹ Hata and Coox, ‘Continental expansion, 1905-1941’, pp. 294-5.

that he, Baron Harada, Prince Konoe and Shiratori Toshio had discussed this and felt “that it would be necessary to guide the military so they do not cause serious damage.”¹⁴² The prosecution argued further, “This constant thread in the conversations of an expected move by the Army to seize control of the government was not without basis in fact.”¹⁴³ The prosecution also argued that the Mukden Incident was a step in the acquisition of power domestically as well. The prosecution used the testimony of Tanaka to support this. Tanaka stated that in 1932, a Captain Cho told him “that the purpose of the incident was to cleanse the ideological and political atmosphere, to renovate Japanese politics by assassinating the leaders, to set up a new government and then to obtain with the new unity, unanimous support for the settlement of the Manchurian Incident.”¹⁴⁴

The assassination of Prime Minister Inukai Tsuyoshi in May 1932 was held up by the prosecution as an example of the intimidation and violence that the conspirators were willing to use against their own leaders in order to effect their plans. Inukai had taken office from Wakatsuki, who had admitted Cabinet’s inability to control the army, and in the words of the majority judgment, “The Army...had shown itself to be more powerful than the Japanese Cabinet.”¹⁴⁵ Inukai’s government tried to implement a policy of rapprochement with Chiang Kai-Shek’s government, opening secret negotiations that were abandoned once the Army became aware of them. In late December 1931, Inukai was refused an Imperial Rescript¹⁴⁶ ordering withdrawal from Manchuria and in early 1932, the prosecution argued and judges accepted that Hashimoto and Ōkawa were publishing articles and pamphlets calling for parliamentary ‘reform’ and the end of democracy.¹⁴⁷ Inukai resisted this policy and received repeated warnings through his son from the Chief Cabinet Secretary Mori that his opposition was endangering his life. On May 8, 1932, Inukai gave a speech in support of democracy and condemning ‘fascism’, and on 15 May he was assassinated by eleven junior Navy officers with the support of

¹⁴² *Final Addresses Volume 2*, D-43.

¹⁴³ *Ibid.*, Ex. 179-L, T. 1940.

¹⁴⁴ *Ibid.*, D-44.

¹⁴⁵ MB 1549, *Northcroft Collection*, Item 112603, *Judgment and Annexes, Part B, Chapter IV (added from orphaned items, 12 September 2008)*, IV. The Military Domination of Japan and Preparation for Aggressive War (November 1948), p. 44.

¹⁴⁶ A formal political instrument, which is effectively an answer to a demand or request made as opposed to an order issued on an official’s own initiative. In the Japanese context, these were effectively orders through the Emperor.

¹⁴⁷ *Final Addresses: Volume 2*, D-52, D-53; *Judgment and Annexes, Part B, Chapter IV*, p. 44.

Army officers (including Hashimoto). In discussions after 15 May, Prince Konoe, Baron Harada discussed the situation, with Kido, Koiso and Suzuki present. The majority judgment argued, “it was agreed that Inukai’s assassination was directly attributable to his championship of party government. SUZUKI considered that similar acts of violence would occur if new Cabinets organized under political leadership.”¹⁴⁸

The 2.26 Incident in February 1936 was a failed coup by a group of junior army officers against the Okada government who sought to assassinate key political figures and was connected with factional disputes within militarist circles. The mutineers were part of the *Kōdō-ha* (Imperial Way) faction who took a confrontational approach to existing elites unlike their *Tōsei-ha* rivals who advocated building compromise with elites.¹⁴⁹ On 26 February, 22 officers and 1400 enlisted men revolted in Tokyo seizing control of principal administrative offices in the city for three and a half days, alongside a series of assassination attempts (both successful and unsuccessful). Prime Minister Okada survived, but two other officials were murdered and despite the failure of the rebels to gain support from the military at large, he and his government resigned ten days after the end of the mutiny. This brought to power the accused Hirota Koki whose government implemented the “*Basic Plan of National Policy*” on 11 August 1936, presented by the prosecution as the point at which the militarists had gained control of the machinery of power and were able to begin implementing their conspiracy for aggressive war. The majority judgment, embracing the prosecution’s thesis, described this as “by means of assassination and insurrection, the extremists within the Army had cleared from their path, first the more moderate influences within the War Ministry itself, and then the Cabinet, which, though it had provided no substantial resistance to pressure from the militarists, still represented a less violent policy.”¹⁵⁰ More than this, the Incident and the new Hirota government saw a key change to constitutional convention, whereby the Army and Navy Ministers now had to be selected from those who were active officers in the forces. This allowed the militarists to even more easily undermine democratic government as the War and Navy Ministers were conventionally among the key members

¹⁴⁸ *Judgment and Annexes*, p. 45.

¹⁴⁹ Gordon M. Berger, ‘Politics and mobilization in Japan, 1931–1945’ in *The Cambridge History of Japan Volume 6: The Twentieth Century*, (Cambridge, Cambridge University Press, 1989), pp. 97-153, at pp. 120-121.

¹⁵⁰ *Judgment and Annexes, Part B, Chapter IV*, p. 52.

of the Cabinet, without the confidence of which a government normally could not survive. The prosecution described this as “effectively block[ing] any subsequent premier, who might wish to oppose the army’s demands, from choosing from the reserves a war minister who was freed from army control.”¹⁵¹

The IMT

The victim thesis was argued and applied by the prosecutors at the IMT as well. The rhetoric used by the prosecution and judges illustrates a particular understanding and application of the idea of the German people as victims (indeed the very first) of the Nazi regime. Key examples of this rhetoric are found in the opening prosecution address delivered by Robert Jackson on 21 November 1945. In the introductory section, Jackson described the defendants as having “[taken] from the German people all those dignities and freedoms that we hold natural and inalienable rights in every human being.”¹⁵² Jackson also made a claim that ostensibly contradicted both the occupation statute *JCS 1067* and the wording of the Potsdam Protocol.¹⁵³ He argued, “We would also make clear that we have no purpose to incriminate the whole German people. We know that the Nazi Party was not put in power by a majority of the German vote...The German, no less than the non-German world, has accounts to settle with these defendants.”¹⁵⁴ Jackson’s description of the Nazi Party expressed a sense of victimisation when he contended “was an instrument of conspiracy and coercion”¹⁵⁵ and that “through concentric circles of authority, the Nazi party, as its leadership later boasted, eventually organized and dominated every phase of German life – but not until they had waged a bitter internal struggle.”¹⁵⁶ Jackson identified an important connection between the internal and external actions of the Nazi regime, not simply a practical prosecutorial strategy linked to the charge of conspiracy, but helping to support the rhetoric of the Germans as victims. Similar to the prosecution at Tokyo, the Nuremberg prosecutors emphasised the effect of intimidation on cowering the population. Jackson outlined a situation where “[u]nder the

¹⁵¹ *Final Addresses: Volume 1, Section E*, Part II of the Conspiracy: The Expansion of Control and Domination from Manchuria to the rest of China, E-21.

¹⁵² Justice Robert Jackson (US), ‘Jackson’s Opening Speech’ in *Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg 14 November 1945 - 1 October 1946, Volume II: Proceedings 14 November 1945 – 30 November 1945* (Nuremberg, International Military Tribunal, 1947), p. 100.

¹⁵³ Discussed below.

¹⁵⁴ Jackson, ‘Opening Speech’ in *Trial of the Major War Criminals: Volume II*, pp. 102-103.

¹⁵⁵ *Ibid.*, p. 107.

¹⁵⁶ *Ibid.*, pp. 108-109.

clutch of the most intricate web of espionage and intrigue that any modern state has endured, and persecution and torture of a kind that has not been visited upon the world in many centuries, the elements of the German population which were both decent and courageous were annihilated.”¹⁵⁷ Jackson also emphasised the role of propaganda in controlling the population and speaking of the Germans as passive actors and victims. He claimed

They created positive controls as effective as their negative ones. Propaganda organs, on a scale never before known...inculcated and practiced the Führerprinzip which centralized control of the Party and of the Party-controlled State over the lives and thought of the German people, who are accustomed to look upon the German State, by whomever controlled, with a mysticism that is incomprehensible to my people.¹⁵⁸

Jackson argued there were two categories of crimes committed by the *NSDAP* regime; the first within Germany before and during the war, and the second in occupied Europe during the war though these were not separated in *NSDAP* planning.¹⁵⁹ This played into the conceptualisation of the German people as victims by directly connecting the crimes in occupied Europe and the crimes within Germany. Crimes against humanity within Germany in the address were categorised based on the quoted description of ‘Colonel General Von Fritsch’¹⁶⁰ of 11 December 1938 against three elements. These elements of Germany were argued as the working classes, the organised churches, and the Jews.¹⁶¹ The connection was made between these internal campaigns and the crimes during the war by the statement “Terrorism was the chief instrument for securing the cohesion of the German people in war purposes. Moreover, these cruelties in Germany served as atrocity practice...to follow the pattern later in occupied countries.”¹⁶² This connection was made practically as part of the conspiracy charge to connect pre-war and wartime actions. However, it also emphasised a sense that Germans were victims of the same kind of processes and actions that those in occupied Europe faced after 1939, even if they were not victims in exactly the same way.

¹⁵⁷ *Trial of the Major War Criminals, Volume II*, p. 130.

¹⁵⁸ *Ibid.*, pp. 130-131.

¹⁵⁹ *Ibid.*, p. 113.

¹⁶⁰ *Generaloberst* Werner von Fritsch, implicated in the Blomberg-Fritsch affair in 1938 which allowed Hitler to remove opposition elements within the *Wehrmacht*.

¹⁶¹ *Trial of the Major War Criminals: Volume II*, pp. 113-127.

¹⁶² *Ibid.*, pp. 127-128.

This rhetoric is not only present in Jackson's opening address, but as part of the core of the American prosecution. American prosecutors were tasked with presenting the Allied case for 'Count One – The Common Plan or Conspiracy', and the victimisation rhetoric is most apparent within the fourth particular set out in the Indictment, "The Acquiring of Totalitarian Control of Germany: Political."¹⁶³ The American prosecution set out five key points that its prepared brief purported to prove, and the latter four were clear expressions of victimisation. Major Frank B. Wallis, one of the Assistant Trial Counsel for the US, stated that the brief would prove the Party was committed to any legal or illegal method to achieve its aims, that it disseminated propaganda and used propaganda techniques to assist its rise to power, it ultimately did seize all governmental power. Most importantly, it used this power to "complete the political conquest of the State, to crush all opposition, and to prepare the nation psychologically and otherwise for the foreign aggression upon which it was bent from the outset."¹⁶⁴ The narrative of the American case presented by Wallis emphasised that the aims of the Nazi Party were long-standing, citing the Party program of 1920, *Mein Kampf* and other Nazi literature, and used the same sources to emphasise their commitment to obtaining power by any means.¹⁶⁵

In terms of the doctrines used, the most important doctrine emphasised was the *Führerprinzip* or leadership principle. Wallis argued that this embodied two major concepts of authoritarianism and totalitarianism. Authoritarianism implied all authority was concentrated at the top, and vested solely in the *Führer*, and that there were no legal or political limits to his authority. Authority of others derived from that of the *Führer*, and within their jurisdiction, subordinates were *Führer* in that sphere.¹⁶⁶ Totalitarianism implied that the authority of the *Führer* extended into all spheres of public and private life, and that the Party was to dominate all institutions of the State. Most importantly, the Party "eliminates all institutions, groups, and individuals unwilling to accept the leadership of its *Führer*."¹⁶⁷ The definitions of these ideas in the brief are telling, as they

¹⁶³ 'IV. Particulars of the Nature and Development of the Common Plan or Conspiracy, Count One – The Common Plan or Conspiracy', Indictment of the International Military Tribunal in *Trial of the Major War Criminals: Volume I – Official Documents*, (Nuremberg, International Military Tribunal, 1947), pp. 31-34

¹⁶⁴ Afternoon Session, 22 November 1945, *Trial of the Major War Criminals: Volume II*, p. 179.

¹⁶⁵ *Ibid.*, pp. 180-181.

¹⁶⁶ *Ibid.*, pp. 182-183.

¹⁶⁷ *Ibid.*, p. 183.

show the prosecution's view of the structure of the regime as exceedingly hierarchal and overwhelmingly leadership driven, and in many ways the early form of the 'strong dictator' conception of the Nazi state.¹⁶⁸ More importantly, it also plays into the victim thesis by focusing blame onto those indicted, by constructing a state where leaders had absolute authority and actively worked to eliminate any other source of authority. This meant that as true culpability lay with those and their absolute authority under the *Führerprinzip* (i.e. those on trial), the culpability of the wider population could potentially be minimised.

The victim thesis in the political purging process

Japan

The rhetoric of victimisation was an important thread in the planning and implementation of the political purging process, evident in both the language of official Allied directives relating to political purging, and in the actual implementation of these policies. The *Potsdam Declaration* was the most important public declaration of Allied intentions made during the war. Issued during the major inter-Allied conference in Potsdam, Germany on 26 July 1945, it essentially defined the terms for Japanese surrender and the rhetoric of the victim thesis resounds throughout. Article 4 stated, "The time has come for Japan to decide whether she will *continue to be controlled by those self-willed militaristic advisers...*"¹⁶⁹ Article 6 argued the necessity of removing "the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest."¹⁷⁰ Article 10 was clearly against collective punishment, stating the will of the Allied governments was "[they] do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals."¹⁷¹ Together, these articles provided the basic justification for both the future IMTFE and political purging processes. Interestingly, the IMTFE prosecution explicitly referenced the Potsdam Declaration during proceedings. In their summation in the

¹⁶⁸ This idea argued for the central role of Hitler in the functioning of the *NSDAP* state, as opposed to the 'weak dictator' idea with Hitler acting aloof and without any particular master plan argued by historians such as Hans Mommsen. An important work exploring the historiography of the Third Reich (including the strong/weak dictator issue) is Ian Kershaw's *The Nazi Dictatorship: Problems and Perspectives of Interpretation*, (4th ed., London, Arnold Publishers, 2000), especially the fourth chapter pp. 69-92.

¹⁶⁹ *Potsdam Declaration*, Article 4.

¹⁷⁰ *Ibid.*, Article 6.

¹⁷¹ *Ibid.*, Article 10.

prosecution final address, the prosecution argued that the Potsdam Declaration “was not directed to the people of Japan *whom the record clearly shows had no voice in the matter, but was pointed to their militaristic leaders who alone were responsible.*”¹⁷² Taking this statement literally, it suggests the prosecution argument was effectively to absolve the Japanese people of responsibility for the war, which certainly was practically useful in terms of occupation policy however this may have had unintended consequences for the future.

The two major documents outlining general US occupation policies were issued in the second half of 1945 through the US government and military respectively. The State-War-Navy Coordinating Committee (SWNCC, a coordinating body between the three government departments) issued the ‘Initial Post-Surrender Policy’ (SWNCC 150/4/A). This document contained what were intended to be the ‘ultimate objectives’ of the occupation through the establishment of a ‘peaceful and responsible government.’ Among the four principal means for achieving this objective were disarmament and demilitarisation so that “the authority of the militarists and the influence of militarism will be totally eliminated from her political, economic, and social life. Institutions expressive of the spirit of militarism and aggression will be vigorously suppressed.”¹⁷³ Explicit in this was the idea that two major problems to be removed from Japanese society, and that the ‘militarists’ were those who should be blamed. This idea was further bolstered through Part III that stated “Every effort shall be made to bring home to the Japanese people the part played by the military and naval leaders, and those who collaborated with them, in bringing about the existing and future distress of the people.”¹⁷⁴ Contained in this section was also the directive to the occupying authorities to purge from government and bureaucracy military figures and those associated with ultra-nationalist and militarist organisations. Part III also contained the directive for the trial of war criminals, and directives for democratization, and that all three — purges, trials and democratisation — were to be intimately connected. It is implicit in the political objectives seems to be the idea that the authority of the militarists and militarism was the

¹⁷² *Final Addresses: Volume 1, Prosecution Sections A-E*, Transcript Pages 38949-39325, *Summation of the Prosecution*, Section A, pp. 6-7 [my emphasis].

¹⁷³ SWNCC 150/4/A *State-War-Navy Coordinating Committee: Politico-Military Problems in the Far East: United States Initial Post-Surrender Policy*, Part I – Ultimate Objectives.

¹⁷⁴ *Ibid.*, Part III.

actual problem and not the Japanese people as such. This was supported by the instructions given to MacArthur in JCS 1380/15, issued by the Joint Chiefs of Staff and the military directive about how to implement the occupation. One of the instructions in establishing military authority was as follows

By appropriate means you will make clear to all levels of the Japanese population the fact of their defeat. They must be made to realize that their suffering and defeat have been brought upon them by the lawless and irresponsible aggression of Japan, and that only when militarism has been eliminated from Japanese life and institutions will Japan be admitted to the family of nations.¹⁷⁵

Both *SWNCC 150/4/A* and *JCS 1380* stressed the need to make the Japanese people understand the role that militarism played in fostering the wars of aggression. The Japanese were to be shown that it was militarism that had brought them to defeat and occupation, and the necessity of its removal.

However, these documents only outlined general objectives, and while the political purging process was to be an important part of these, it only began properly with SCAP's submission of the directive 'Removal and Exclusion of Undesirable Personnel from Public Office' (generally referred to as *SCAPIN 550*) to the Japanese government on 4 January 1946. Richard Finn called *SCAPIN 550* "a mighty blow against the military and political leaders of prewar Japan. To purify Japan's political, economic, and social systems of persons tainted by nationalism was a primary U.S. goal."¹⁷⁶ *SCAPIN 550* specifically cited Article 6 of the *Potsdam Declaration* as its authority, justified as eliminating the authority and influence of those who had 'deceived and misled the people of Japan'. *SCAPIN 550* stated "In order to carry out this provision of the Potsdam Declaration, the Imperial Japanese Government is hereby ordered to remove from public office and exclude from government service" three categories of individuals.¹⁷⁷ The categories of individuals were "active proponents of militaristic nationalism and aggression", "Influential members of any Japanese ultra-nationalistic, terroristic, or secret patriotic society, its

¹⁷⁵ *Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan* (JCS1380/15), 3 November 1945, 4.e. [my emphasis].

¹⁷⁶ Richard B. Finn, *Winners in Peace: MacArthur, Yoshida, and Postwar Japan*, (Berkeley, University of California Press, 1992), p. 82.

¹⁷⁷ *SCAPIN 550, 'Memorandum for: Imperial Japanese Government. Through: Central Liaison Office, Tokyo. Subject: Removal and Exclusion of Undesirable Personnel from Public Office.'* 4 January 1946, Sections 1 and 2.

agencies or affiliates” and those influential within the connected units of the IRAA.¹⁷⁸ These categories reflected the later constructions of the indictment and prosecution arguments during the IMTFE proceedings, as they focused on those who expounded militaristic ideas before and during the war, and specifically on the array of ultra-nationalist and militarist societies that sprouted from the early 1930s. Many of these societies were connected to members of the accused, and many of these were mentioned throughout the trial.¹⁷⁹ Hans Baerwald argued that initially the aim of the purge was associated narrowly with demilitarization and effecting the aims of the *Potsdam Declaration*, and “Since the removal of those who had deceived and misled the people of Japan to embark on world conquest had been the original objective, it follows that the persons purged would represent the American view of who was to blame.”¹⁸⁰ Notably, the categories in the purge directive bore a close resemblance to the IMTFE indictment, as many of the accused would have fitted into one or more of the categories. The presence of the rhetoric of victimisation in the purge directive is important for another reason, in that the purge directive was the actual process of political purging in occupied Japan rather than the IMTFE. Baerwald noted, “[o]nly a very small minority of individuals in these categories were incarcerated and tried as war criminals. In reality, it was the purge which implemented these parts of the SWNCC and JCS directives.”¹⁸¹ Despite this, the IMTFE was important on a symbolic level both in a microcosm of the purging process as a whole, but also in helping to provide the ideological backbone to the process. The presence of the victim thesis in the arguments of the IMTFE and the major statements of occupation policies was reflected in the purge directive targeting groups seen as victimisers.

¹⁷⁸ *SCAPIN 550*, Sections 2a to 2c.

¹⁷⁹ These societies and bodies were possibly intended to be part of the indictment, but in the end the decision was made not to, probably on the basis that Nuremberg had gone too far in this regard and that in the Japanese context they were not analogous to the SA et al. [Boister and Cryer, *The Tokyo IMT*, pp. 49-50].

¹⁸⁰ H.H. Baerwald, *The Purge of Japanese Leaders Under the Occupation*, (Berkeley, University of California Press, 1959), p .3.

¹⁸¹ *Ibid.*, p .8.

Germany

Like Japan, Germany too underwent political purges. While there was some general agreement on the necessity of political purging in some form, the specific processes undertaken in each occupation zone varied considerably. In the US Zone a similar political purging process to that of Japan, and constructed in part around the victim thesis, was undertaken. However, the process was more complicated in the German case with significant debate in planning (as noted above) and in its implementation. Despite this, the idea of victimisation emerged in Germany as well with slightly different emphases. The actual drafting of political purging processes (even if only in draft and general form) began earlier in respect to Germany. Detailed occupation planning began in early 1944 within the military when SHAEF¹⁸², carrying the responsibility for planning and executing the invasion of mainland northwest Europe, established a civil affairs section (known as G-5) for occupation planning. G-5 began preparing a guide for military government of occupied enemy territory, and began to work on the *Handbook for Military Government for Germany*. Initially, this generally reflected traditional military occupations where the aim was to keep the population passive, and continue normal patterns of administration where possible. However, it became apparent that there was a need to deal with the issue of the power and influence of the *NSDAP* and from spring 1944, G-5 began to assign personnel to this issue. Biddiscombe shows that G-5 officers primarily utilised the work of the OSS group who had presented detailed studies on Germany to the Pentagon in March 1944.¹⁸³ The OSS group proposal was to draft lists of individuals subject to arrest/removal and lists of appropriate replacements into two groups of automatic or discretionary arrest and dismissal. However, G-5 planners felt this was too wide-ranging and impractical and pared down the categories to senior officials. The form of political purging initially suggested in the *Handbook* of July 1944 centred on security concerns, but a later form included a purging process as suggested by the OSS group, albeit modified. This was overshadowed by the emergence of collective guilt ideas and events from July 1944, as both the seemingly imminent Allied victory and the failure of the July Plot weakened assumptions that the war would end as it did in 1918 with German

¹⁸² Supreme Headquarters Allied Expeditionary Force was the administrative head of all Allied forces in northwest Europe under General Eisenhower.

¹⁸³ Biddiscombe, *The Denazification of Germany*, p. 21.

internal collapse. Military intelligence studies within SHAEF assumed that there would be widespread resistance and that the *NSDAP* regime would continue as an insurgency, which Biddiscombe argues helped promote more draconian views from senior levels.¹⁸⁴ Moreover, Morgenthau presented Roosevelt with carefully culled excerpts of the *Handbook* to help make his case for his proposals, prompting Roosevelt to send a memorandum to War attacking the *Handbook*. This intervention and the debate over Morgenthau's proposals left planners in War in a difficult position of trying to reconcile public and political opinion, preventing overly draconian and impractical policies, and preserving military freedom of action. The SHAEF directive of 9 November 1944 reflected the policy shift (despite efforts within War). The liquidation of the *NSDAP* was decreed, and large categories of individuals were identified to be subject to mandatory removal and/or arrest including all *NSDAP* members from before 1933.¹⁸⁵

The key US policy document for the early part of the occupation was the interim directive for the military government of Germany. This was issued in April 1945 as 'Directive to Commander-in-Chief of United States Forces of Occupation Regarding the Military Government of Germany' or *JCS 1067*. This policy emerged initially in a US Cabinet Committee (Morgenthau, Stimson, Hull and Harry Hopkins) established in September 1944, and during the following months, Treasury officials and the OSS brought increasing pressure on War planners arguing for strict denazification policies. While War and State were able to defeat Morgenthau's economic proposals, as a compromise they conceded on political policies. The initial drafts of *JCS 1067* were Treasury inspired in their political aspects, and this largely remained the case in the final product. Essentially the wording of *JCS 1067* was a repudiation of the victim thesis and set out policy that was more in line with the collective guilt and harsh-peace ideas. In 'Basic Objectives of Military Government in Germany', it stated

It should be brought home to the Germans that Germany's ruthless warfare and the fanatical Nazi resistance have destroyed the German economy and made chaos and suffering inevitable and that Germans cannot escape responsibility for what they have brought upon themselves.¹⁸⁶

¹⁸⁴ Biddiscombe, *The Denazification of Germany*, p. 29.

¹⁸⁵ *SHAEF Directive for Military Government of Germany prior to Defeat or Surrender*, 9 November 1944.

¹⁸⁶ *Directive to Commander-in-Chief of United States Forces of Occupation Regarding the Military Government of Germany*; April 1945 (*JCS 1067*).

Further, *JCS 1067* stated

the principal Allied objective is to prevent Germany from ever again becoming a threat to the peace of the world. Essential steps in the accomplishment of this objective are the elimination of Nazism and militarism in all their forms, the immediate apprehension of war criminals for punishment...and the preparation for an eventual reconstruction of German political life on a democratic basis.¹⁸⁷

The specific instructions on denazification reflected the basic ideas of Neumann in that it considered it necessary to remove all those involved in the *NSDAP* and connected organisations from public office, but also demanded acknowledgement of collective responsibility from the wider population. Denazification was to be a “Nuremberg of the common man.”¹⁸⁸ However there was an important aspect to *JCS 1067* in its grant of authority to the military government, whereby it “include[d] authority to take all measures deemed by you necessary, appropriate or desirable in relation to military exigencies and the objectives of a firm military government.”¹⁸⁹ This allowed the commander on the ground to modify policy on their own initiative if they could argue it was necessary, appropriate, or desirable. This became important as the American Military Government (AMG) began to implement the denazification programme. *AMG Law No. 8* of 6 September 1945 established a distinction between those who had joined the *NSDAP* before 1 May 1937 and those who joined after, on the basis that those who joined before were ‘hard-core’ Nazis. This was logically problematic as it was both an arbitrary distinction and those joining after this date might well fully understand exactly what they were supporting.¹⁹⁰ This sat alongside an earlier AMG directive of July, which made a distinction between ‘active’ and ‘nominal’ members of listed suspect organisations. This policy was also problematic as it was difficult to determine what ‘active’ membership entailed meaning US officials erred on the side of quick arrests. The US denazification programme became even more problematic with the expansion of the programme to anyone seeking public responsibility or business with the occupation authorities in *Allied Control Council Law no. 24. (AMG 24)*. This directive also required

¹⁸⁷ *JCS 1067*.

¹⁸⁸ Jörg Friedrich, *Die kalte Amnestie*, (Munich, Piper, 1984).

¹⁸⁹ *JCS 1067*.

¹⁹⁰ This was a common argument for senior German officials against the policy.

these individuals to fill out a detailed survey about their past involvement, the infamous *Fragebogen*. At one level, this more invasive and wide-ranging process became simply impractical with AMG officials swamped with the processing of returned *Fragebogen* and increasing frustrations at delays in implementation.

AMG 24 and the denazification programme also began to be seen as somewhat arbitrary both by Germans and by some American figures. The AMG officials were also concerned with the ballooning workload given also that the rapid US demobilisation meant that there were severe personnel shortages by the end of 1945. General Clay (military governor of the US Zone) ordered an investigative commission at the end of 1945 and its findings revealed many of the problems in the US denazification programme. It found too much focus on 'big shots' to the detriment of properly implementing AMG directives, inconsistent implementation of directives, a growing sense that the large pool of dismissed Nazis would be a political problem, unclear language making implementation practically difficult, the problem of finding replacements for dismissed individuals and a severe lack of AMG manpower.¹⁹¹ These problems simply became even more apparent with attempting to implement *AMG 24*, coupled with a growing realisation that the harsh but idealistic goals set out in *JCS 1067* might not be practically achievable. Taylor commented that the "once-optimistic soldier-reformers were starting to think they might just settle for crowd control"¹⁹² which reflected changing policies into 1946. In his 1950 report, the former Undersecretary of War John McCloy, now acting as U.S. High Commissioner for Germany argued that the initial steps of the denazification programme had "been attained substantially by the summer of 1946."¹⁹³ While this comment certainly reflects some level of post-facto justification for the policy shift, it does suggest changing priorities within AMG, especially given that McCloy was an architect of *JCS 1067*.

AMG responded to these problems through the implementation of the Law for Liberation from National Socialism and Militarism (*Befreiungsgesetz*), drafted by AMG, and processed through German administration in the US zone in March 1946. This stated, "[AMG] has now decided that the German people may share the responsibility for

¹⁹¹ Biddiscombe, *The Denazification of Germany*, p. 62.

¹⁹² F. Taylor, *Exorcising Hitler*, p. 269.

¹⁹³ John J McCloy, 'The Present Status of Denazification' in Office of the U.S. High Commissioner for Germany, *5th Quarterly Report on Germany, October 1-December 31, 1950*, pp. 46-55.

liberation from National Socialism and Militarism in all fields.”¹⁹⁴ The statute created five categories of guilt of major offenders, offenders, lesser offenders, followers, and persons exonerated.¹⁹⁵ The reality of the German administration of the denazification programme was mixed, as it was less burdensome on AMG. However, it became what Bessel calls a “*Mitläuferfabrik* – a ‘followers factory’ - from which the vast majority of those deemed to have been implicated in the Nazi regime emerged as passive participants.”¹⁹⁶ The *Befreiungsgesetz* was ostensibly implemented to aid AMG in making the distinction between ‘active’ and ‘nominal’ Nazis, however as Biddiscombe argues, it was “the practical end of the ‘collective guilt’ thesis as a source of policy.”¹⁹⁷ The shift signalled by the *Befreiungsgesetz* was mirrored by the emergence of a ‘reverse-course’ in US occupation policy generally. Rising concerns over relations with the Soviets coupled with the breakdown in the reparations agreements between the Western and Soviet zones agreed at Potsdam left the US and Britain with the costs of importing food and economic stability in their zones. The Stuttgart Speech of Secretary of State Byrnes signalled a policy shift towards economic reconstruction as a primary goal of AMG, and *AMG officials* increasingly undermined JCS 1067 in practice. By 1947, the policy outlined in *JCS 1067* effectively no longer matched either policy goals in Washington, or those of AMG in Germany, and *JCS 1067* was replaced on 11 July 1947 with *JCS 1779*. This new directive was a response to changing circumstances and priorities within Germany in the context of the emerging Cold War, Its fundamental objective was “just and lasting peace.” It noted however that such peace “can be achieved only if conditions of public order and prosperity are created in Europe as a whole...[requiring] the economic contributions of a stable and productive Germany.”¹⁹⁸

¹⁹⁴ ‘Law for liberation from National Socialism and Militarism (German legislation), 5 March 1946, as amended and annotated’ from *Germany (territory Allied occupation, 1945-1955: U.S. Zone). Office of Military Government. Civil Administration Division. Denazification, cumulative review. Report, 1 April 1947-30 April 1948. no. 34 (1948)*, pp. 52-97 at p. 52.

¹⁹⁵ *Ibid.*, Article 4, p. 54.

¹⁹⁶ R. Bessel, *Nazism and War*, (London, Weidenfeld & Nicolson, 2004), p. 177.

¹⁹⁷ Biddiscombe, *The Denazification of Germany*, p. 74.

¹⁹⁸ *Directive From the Joint Chiefs of Staff to the Commander-in-Chief of the United States Forces of Occupation, July 11, 1947. (JCS 1779)*.

Conclusion

The victim thesis was an important part of the occupations of both Japan and Germany, with important elements with the US administration holding positions that argued the people of both states were not to blame for the crimes of the defeated regimes. Rather, in their view responsibility lay within a leadership clique who conspired to take power and then to control and intimidate the populace. These leaders then were responsible for the array of crimes they had committed both at home and abroad on the basis that the people were their passive victims, rather than bystanders or even active participants. This idea was an important part of the reforms undertaken during the occupation, for it underpinned large parts of what occurred during the occupations. This idea emerged through the planning discussions for the future occupations of Japan and Germany after their defeat and surrender. This was a gradual and patchy process of meetings and planning papers, becoming more substantial toward the end of the war, and in both cases, the victim thesis became an important part of moderate peace ideas for the future occupations. For Japan, the idea emerged largely through the advocacy of a group of officials within the State Department who had experience with pre-war Japan and argued for targeting particular groups within the nation, rather than the nation itself. For Germany, while ideas were circulating in planning discussions, the key moment at which the victim thesis emerged was in September 1944 in the discussions around the proposed Morgenthau Plan for the future of Germany. The attempt by Stimson and War planners to create an alternative vision for the occupation of Germany saw the adoption of the victim thesis, especially in their proposal for the trial of leadership figures as the true criminals at fault.

The victim thesis was an important justification for the international criminal tribunals, and affected how the indictments were drafted and the selection of defendants (this idea is further explored in Chapter 3). The rhetoric of victimisation was an important part of prosecution arguments at both the IMTFE and IMT through the arguments that the defeated regimes were minority groups who had taken control of the state from 'democratic' governments through intimidation and violence. These groups then maintained their control through intimidation, propaganda, and indoctrination to make the people their passive subjects, and to prepare the nation for the aggressive wars of the

future. This argument was useful because not only did it fit within the parameters and constraints the prosecution was operating under, but also because it fit with moderate peace ideas that blamed the leadership and not the people. Yet in reality, this idea was problematic and the relationship between the leadership of these regimes and the people far more complex and murky. More than this, the black and white contrast of the defeated regimes and the governments preceding them ignored the complex ethical character of the earlier governments. The governments of pre-1931 Japan, while democratic, were flawed and corrupt with the system of party politics connected to zaibatsu business interests, and the Meiji constitutional system was deeply flawed. Moreover, these governments through the 1920s and early 1930s did not necessarily disagree with militarist objectives to dominate the region, but rather with the means and timing of doing so. In Germany, the Weimar governments since March 1930 had operated through emergency presidential decrees, rather than parliamentary consultation and in practice were hardly democratic.

The victim thesis justified the removal from political life of those who were regarded as having been complicit in the victimisation of the people and the processes that US officials implemented were constructed around ideas of victimisation. The processes drafted in 1945 focused in part around targeting particular groups and institutions that were perceived as having been complicit in the victimisation of the people. The processes also connected the rhetoric of victimisation to the wider aims of the occupation, for the removal of the victimisers was a way to implement the major aims of deradicalisation, democratisation, and demilitarisation. The processes in Japan and Germany had many similarities and differences. They were similar in the way that they linked into moderate peace ideas by focusing on individual (or at least less collective) guilt, and in the way that they played an important role in reshaping the political lives of each respective nation (even if not completely). The processes also followed a similar path of decreasing intensity as time went on and occupational priorities changed — the ideal gave way to the reality of having to govern. However, there were also important differences in each state. The German processes initially were harsher than moderate peace advocates might otherwise have liked as a product of their timing and compromise to avoid the economic aspects of the Morgenthau Plan. Yet, practical and political difficulties with implementing harsher instructions led to a softening of procedures and transfer of much of the problem

to the Germans themselves. Thus, the process as it eventuated was more in line with moderate peace ideas than the initial instructions in JCS 1067. Another key difference was in the focus of the procedures — in Japan the military was a key focus given its role in what had occurred, whereas in Germany the *NSDAP* with its party structure and institutions was the clear focus.

Chapter 3: Who is to be tried? The defendants at the international criminal tribunals and the wider aims of the Allied occupations

The paired questions of the charges to be laid and whom to indict were the two key questions facing Allied officials and prosecutors in planning the international criminal tribunals. How they sought to answer these questions and the answers they found was not simply about the conduct of the trials alone, but linked to the wider political, social, and economic aims of the occupations. The tribunals were never only about punishing the guilty for their crimes. The process of drafting the indictments was one involving repeated deliberations and discussions between Allied governments and their representative prosecutors before the final indictments were ready. The conspiracy concept was fundamental to the US conception of the international tribunals and an idea that advocated strongly in deliberating with other Allied powers in terms of drafting the charges. While they were able to overcome opposition to the conspiracy concept being included at all, they were only able to have the idea applied to the charge of crimes against peace and “participation in a common plan or conspiracy for the accomplishment of a crime against peace” became the first charge of the indictment. The prosecution of the conspiracy to commit crimes against peace was the responsibility of the US prosecutors during the IMT, and in the prosecutions conducted by US prosecutors centred on the idea of the conspiracy of *NSDAP* leaders to engage in aggressive war. At the IMTFE with a greater level of control over proceedings, the US was able to implement the conspiracy concept more thoroughly. The structure of the IMTFE indictment followed the model of the IMT indictment in having three categories of crimes, defined as ‘classes’.

The defendant selection process went beyond punishing alleged crimes, and linked into the implementation of the political, social, and economic objectives by the occupiers. Analysing both those who were selected and not selected helps to illustrate the political, social, and economic aims of the occupations, as the tribunals were an important part of the negative reforms aspect of the occupation. The tribunals provided a forum to punish and shame sections of Japanese and German society that the Allied occupiers wished to highlight in order to aid both the other main negative reform process (the purges) discussed in the previous chapter, and to aid the intended positive reforms. An individual’s indictment was an important indicator of both their culpability and of what

they represented, but also of an intention to encourage particular reforms. The Allied prosecutors largely conducted the process themselves, although with important oversight and intervention from Allied governments. For both tribunals, these processes involved negotiations and discussions between the prosecutors concerning inclusion or exclusion of individuals and groups from indictment. These negotiations and discussions involved the use of informal criteria concerning their actual culpability, the significance of an individual's position, how/if an individual 'represented' particular groups or organisations, and how/if an individual provided symbolic representation of larger political and social groups. Allied prosecutors did not make their decisions in a vacuum; they were influenced by several practical and political factors that meant the defendant selection process was far more complex than that in the vast majority of domestic trials. Important practical factors included the need to limit the number of defendants for the conclusion of the tribunals in a timely manner, the acceptance of the impossibility of trying every potential defendant at once, and the constraints imposed by the charges in the indictment. Political factors also played an important role in the selection process, for while the Allied prosecutors took the lead in making selection decisions, they were representatives of the governments that had appointed them, and the desires of these governments were an important part of the selection process.

Importantly, particular Allied conceptions about the pre-war regimes of Japan and Germany, and the reforms that the Allies wished to implement, underpinned the selection processes. Selecting particular defendants was a way that the occupiers could publicly target aspects of the defeated regimes and societies they wished to reform as a symbolic action, as well as punishing their specific alleged offences. The indictments also reflected theories of victimisation, with an emphasis being placed on individuals and organisations perceived to have been involved in that victimisation, or who had aided and abetted the 'true' criminals. As it was impossible to try all of those involved, individuals or groups of individuals were selected to represent the group targeted, and practically this meant that one consideration was aiming to indict higher-level officials if possible. Indictment was also about representing 'bodies' in terms of the bureaucratic and administrative organs of state and their collective crimes through the individual. The tribunals were not simply judicial exercises, but part of the overall Allied policies towards demilitarisation and democratisation. The tribunals could present an opportunity to punish and shame

symbolic representatives of the elements of society and state that the Allies wished to reform in pursuit of stable demilitarised and peaceful democratic states. Along with the purges, the tribunals sat at the core of the negative aspect of these reforms in that they aimed to punish and remove the perceived negative influences standing in the way of demilitarisation and democratisation. An important consideration in analysing the selection processes is the question of those who were not indicted, as this can be just as revealing of occupation priorities and attitudes. Practical and political factors also played an important role in these decisions, such as the potential for future tribunals (as was the case with the IMTFE). Political factors such as the circumstances of the occupations at the time and the wider goals of the occupations were important aspects of decisions against indictment of particular individuals or groups.

The Conspiracy Concept

The idea of the conspiracy of 'leaders' of the defeated regimes aimed at securing the domination of the surrounding regions as seen in the IMTFE and IMT indictments sat at the core of the US prosecution efforts at the tribunals. This idea focused on prosecuting crimes against peace in particular, yet the idea of conspiracy as it initially emerged in US planning discussions was aimed at dealing with a practical legal difficulty at prosecuting the crimes of the *NSDAP* regime before 1939. The idea reflected a particular understanding of the *NSDAP* regime as a small leadership group who had taken power from a weak and compliant democratic government, and who had some form of 'master plan' towards launching an aggressive war. The conspiracy thesis argued by the US prosecutors at the IMT however, was specifically focused around the idea of aggressive war in part because despite making strong efforts, the US was unable to get the other Allies to apply the conspiracy idea to all charges. However, the focus on aggressive war and crimes against peace also reflected the importance the US placed in the idea of trying to criminalise aggressive war in international law, in the same vein of the 1928 Kellogg-Briand Pact where the signatory powers (including Japan and the Weimar Republic) renounced war as an instrument of national policy.

As a legal concept, conspiracy developed as part of Anglo-American common law. Modern definitions of conspiracy emphasise the idea of common intention to commit a crime,

such as the New Zealand's Court of Appeal's definition of conspiracy in *R v Gemmell*, "an intention which is common to the mind of the conspirators and the manifestation of that intention by mutual consultation and agreement among them."¹⁹⁹ The United States Code (the codification of US federal law) Title 18 sets out an offence of conspiracy to commit a federal offence. Section 371 states "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy."²⁰⁰ This emphasises the US view that conspiracy requires some act aimed at effecting the conspiracy, successfully or not. The modern concept also includes the principle that members of a conspiracy need not be present for its entire length, and that the key is some form of continuing overall plan in pursuit of a common goal.²⁰¹ The idea of a conspiracy at the heart of the *NSDAP* regime and culpable for its crimes was an important part of the justifications made for the international criminal tribunals. However, its application was controversial among some other Allied powers because continental legal systems had much narrower concepts of conspiracy (if any at all). Henri Donnedieu de Vabres noted that the French concept of conspiracy had a relatively narrow scope, focusing on the internal security of the state. In contrast, the British concept had a broader application, where any agreement aimed at committing an illegal act would be punishable as conspiracy.²⁰² For US prosecutors, not only were they from a legal system familiar with conspiracy as a concept, they had a lot of recent experience in utilising conspiracy in a systematic way. Prosecutors in the Justice Department had experience in using conspiracy indictments against organised crime and the anti-trust campaigns of the New Deal period. David Luban describes the use of conspiracy as primarily "a device for attacking organized crime [and] gangsterism...The shock value and moral message of utilizing a conspiracy charge at Nuremberg lay in the analogy it presented...[suggesting] the Nazis were simply gangsters who had seized control of the German state in furtherance of their plan to launch a war."²⁰³ The image created by this connected with the conception of the Nazi regime within the victim thesis,

¹⁹⁹ *R v Gemmell* [1985] 2 NZLR 740, at 743.

²⁰⁰ 18 U.S. Code, Section 371 – Conspiracy to commit offense or to defraud United States.

²⁰¹ *Papalia v R* [1979] 2 SCR 256, at 276-277 [Supreme Court of Canada].

²⁰² H.D. de Vabres, 'The Nuremberg Trial and the Modern Principles' in *Perspectives on the Nuremberg Trial* at 243 [de Vabres was the primary French judge on the IMT].

²⁰³ Luban, 'The Legacies of Nuremberg', p. 665.

what Luban describes as “a mob seizing the state was useful to the Allies in that it allowed the convenient fiction that the German people were passive victims.”²⁰⁴

The genesis of the conspiracies in the tribunal indictments was through a War Department lawyer Colonel Murray Bernays in 1944. Bernays worked in the personnel branch of the Army General Staff, and drafted a memorandum dated 15 September 1944 on the issue of war criminals. Bernays sought to provide a solution to the problem of dealing with major war criminals given the scale of their atrocities under existing international law. Bernays understood the solution to this had to be capable of rejecting the idea that “high interests of state [justified] national crimes”, while simultaneously exposing the “menace of racism and totalitarianism”, and making Germans realise “a sense of their guilt...[and] their responsibility for the crimes committed by their government.”²⁰⁵ Bernays’ plan dealt with the problems of pre-war crimes and organisations by proposing to charge Nazi organisations and their leaders not simply with violations of laws of war, but conspiring to commit such violations as well. Telford Taylor describes the reasoning behind this, “that if members of the Nazi organisations had agreed among themselves prior to the war to commit violations of the laws of war when war came, their preparatory conduct before the war would be punishable as a part of the conspiracy to commit the wartime atrocities.”²⁰⁶ The second limb of Bernays’ plan was to indict the organisations themselves on the basis that it would then be possible to convict members of these vast organisations simply on the basis of membership; the severity of punishment could then be adjudicated on their involvement or level of knowledge. The memorandum formed the basis of the plan that Bernays presented to Stimson, arguing a need to strike at what he called the ‘basic crime’ of a “Nazi plan for total war and characterising the *NSDAP* regime as “conspiracy of gangsters who had taken over a complaisant or conniving Government for their own criminal purposes.”²⁰⁷ Stimson was convinced by Bernays’ plan and presented it to President Roosevelt on 21 November 1944, arguing that

²⁰⁴ Luban, ‘The Legacies of Nuremberg’, p. 665.

²⁰⁵ B.F. Smith, *The Road to Nuremberg*, (New York, Basic Books, 1981), p. 51.

²⁰⁶ T. Taylor, *The Anatomy of the Nuremberg Trials*, p. 36

²⁰⁷ Smith, *The Road to Nuremberg*, pp. 61-62.

conspiracy with...representatives of all classes of actors brought in from top to bottom, would be the best way to try it and would give us a record and also a trial which would certainly persuade any on-looker of the evil of the Nazi system.²⁰⁸

However, despite Stimson's efforts, the internal debate amongst the branches of the US government about how to deal with Germany was still ongoing and by the end of 1944, there was still no clear official policy. The conspiracy concept became official policy with Roosevelt's first and only directive on war crimes in January 1945. In a 3 January memorandum to the Secretary of State Edward Stettinius Jr., Roosevelt requested a report on the position of the US on prosecuting *NSDAP* leaders for war crimes, specifically stating that any indictment for waging aggressive war, and these and other charges *might be joined in a conspiracy indictment*.²⁰⁹ White House Counsel Samuel Rosenman, who sought to find a compromise position between harsh and moderate peace advocates, drafted a response to this memorandum. Rosenman's memorandum was presented to Roosevelt on 22 January, proposing an international tribunal to be established to try both high-ranking leaders, and the groups and organisations through which they acted. Defendants were to be charged with both the commission of crimes and the conspiracy to commit them. Assuming one or more organisations were found guilty, it would then be possible to bring individual members before courts and the only necessary proof of guilt would be their membership.²¹⁰

This plan was presented to Allied foreign ministers at the San Francisco Conference (this established the United Nations) in late April 1945, and the London Conference (concerning the IMT itself) in late June 1945.²¹¹ The US delegation was able to convince the other Allied powers to include the conspiracy concept in the indictment, but as a compromise, this was limited only to crimes against peace. The conspiracy as it appeared in the IMT indictment was contained in Count One

²⁰⁸ Taylor, *The Anatomy of the Nuremberg Trials*, p. 37.

²⁰⁹ Roosevelt Memorandum to Stettinius, 3 January 1945, cited in Taylor, *Anatomy*, p. 37 [my emphasis].

²¹⁰ *Memorandum to President Roosevelt from the Secretaries of State and War and the Attorney General*, January 22, 1945, <http://avalon.law.yale.edu/imt/jack01.asp>, (last accessed 6 March 2015).

²¹¹ *MEMORANDUM OF PROPOSALS FOR THE PROSECUTION AND PUNISHMENT OF CERTAIN WAR CRIMINALS AND OTHER OFFENDERS* 30 April 1945, <http://avalon.law.yale.edu/imt/jack05.asp>, (last accessed 6 March 2015).

All the defendants, with divers other persons, during a period of years preceding 8 May 1945, participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy...The common plan or conspiracy embraced the commission of Crimes against Peace, in that the defendants planned, prepared, initiated, and waged wars of aggression, which were also wars in violation of international treaties, agreements, or assurances.²¹²

This undermined Bernays' initial intention of connecting crimes against humanity with war crimes, but reflected the changing nature of the conspiracy concept towards criminalising aggressive war and crimes against peace. The reshaping of the conspiracy idea also reflected the increasing influence of the victim thesis among US planners, and the particular conception of the *NSDAP* state that emphasised the victimhood of the German people. The limitation of the conspiracy charge to crimes against peace forced US prosecutors to focus on what had occurred in Germany before 1939 with the effect of strengthening the rhetoric of victimisation.

The conspiracy concept was more central to the IMTFE as the US had a more dominant (though not completely) role in this tribunal. The inclusion of the conspiracy idea was influenced by previous practice, as the IMTFE was consciously modelled on the IMT. The conspiracy charge was also a solution to a particular problem in that there was no analogous structure to the *NSDAP* in Japan, but rather an amorphous group of 'militarists'; military officers in both the Army and Navy, civilian government officials, journalists, academics and others. There was also the practical problem that individuals who were involved in earlier events were not involved in later events (importantly the war itself) and vice versa. This made for a concept that purported to tie individuals and events over a seventeen-year period together and impose some sense of 'general will' upon them an appealing one to the prosecutors. Rather than four general charges as in the IMT indictment, a long list of individual charges that covered specific events, or the same offence against individual states, was put. Importantly, the IMTFE indictment only included individuals who could be charged with crimes against peace (or Class A) offences, and all of the defendants were charged under Count 1 of the Indictment

²¹² *Indictment, International Military Tribunal*, <http://avalon.law.yale.edu/imt/count.asp> (last accessed 6 March 2015).

participat[ion] as leaders, organizers, instigators, or accomplices in the formulation or execution of **a common plan or conspiracy**...The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein and bordering thereon...²¹³

Because of the structure of the indictment, the conspiracy concept was more central to the prosecution arguments and narratives, and an important effect on the defendant selection process. To be indicted, individuals had to be potentially guilty of crimes against peace, meaning those guilty 'only' of war crimes or crimes against humanity and those whose actions could not be construed as crimes against peace could not be included either.

The Selection Process

Japan

The selection process itself was a vital and important part of the IMTFE as it involved deciding who was to be tried, and thus the structure and nature of the prosecutions' arguments and narrative. The selection was influenced by factors such as the nature of the charges and the availability of evidence, but also by the wider political, social, and economic aims of the occupiers for the future Japan. The IMTFE's selection process took place over a five-month period in late 1945 and early 1946, and was conducted by the IMTFE's prosecutors under the ambit of the Charter of the IMTFE. Article 8 of the Charter stated that the Chief Counsel "is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal." This Chief Counsel was to be "designated by the Supreme Commander for Allied Powers" and they were tasked with "render[ing] such legal assistance to the Supreme Commander as appropriate."²¹⁴ The other Allied prosecutors were only 'Associate Counsel' and "any Allied nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief Counsel."²¹⁵ This created a much less balanced prosecution team, given that in terms of the Charter, the Chief Counsel had the decision-making power, and the other prosecutors were merely to assist them. It also gave a strong role to the Supreme

²¹³ *IMTFE Indictment* [my emphasis].

²¹⁴ *International Military Tribunal for the Far East Charter*, 19 January 1946, Article 8(a).

²¹⁵ *Ibid.*, Article 8(b).

Commander who appointed the Chief Counsel and had ostensible authority over them. However, despite these differences in the IMTFE Charter compared with that of Nuremberg, the prosecution team in terms of the selection process operated in a relatively similar collegial fashion, and Associate Counsel did have some important input and influence (especially those from Commonwealth states). Article 8 however was only the culmination of a process of negotiation between the US and other interested Allied parties. Unlike Nuremberg, the international tribunal was to be set up under the auspices of SCAP, rather than by an inter-governmental body. Luc Reydam's and Jan Wouters suggested that this was to avoid the difficulties that the US delegation during negotiations with other Allied delegations at the London Conference.²¹⁶

The SWNCC issued the *Directive on the Identification, Apprehension and Trial of Persons Suspected of War Crimes* to MacArthur on 6 October 1945. This directed MacArthur to prepare trials of major Japanese war criminals and to keep the names of those to be arrested secret until the arrest itself, and conferred upon MacArthur the power to appoint this court. Paragraph 15 provided the court was to use the procedures and principles adopted by the Nuremberg tribunal,²¹⁷ except where change was necessary. However, this directive was drafted by the US alone, and the other Allies were only informed of the instructions on 24 October 1945, when the instructions were retitled and passed to individual governments for action. The US continued to prepare outside of the Far East Advisory Commission (FEAC)²¹⁸ structure intended to co-ordinate action, issuing a further directive to SCAP on 3 November 1945, '*Basic Initial Post Surrender Directive to SCAP for the Occupation and Control of Japan*.' Paragraph 7 provided for "the arrest of various groups of people, including war crimes suspects."²¹⁹ Importantly, sub-paragraph (d) stated that SCAP would "receive further instructions concerning your responsibility

²¹⁶ Luc Reydam's and Jan Wouters, 'The Politics of Establishing International Criminal Tribunals', *Working Paper No. 77 – December 2011*, Leuven Centre for Global Governance Studies https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp71-80/wp77.pdf (last accessed 9 March 2015), p. 11.

²¹⁷ Directive on the Identification, Apprehension and Trial of Persons Suspected of War Crimes, from Boister and Cryer, *The Tokyo IMT*, p. 22.

²¹⁸ This was the initial consultative body on the terms of Japan's surrender. The USSR refused to join and it was replaced in December 1945 with the Far East Commission.

²¹⁹ *Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (JCS1380/15)*, 3 November 1945, paragraph 7, from <http://www.ndl.go.jp/constitution/e/shiryo/01/036/036tx.html>, (last accessed 9 April 2015).

with relation to war criminals.”²²⁰ This suggests that while SCAP was to have the primary role in detaining individuals for trial, the US government might intervene in this process if it felt it was necessary. At the Moscow Conference of 26 December 1945, the US, UK, Soviet Union, and China agreed that SCAP was to have primary responsibility for the implementation of the occupation and control of Japan, and agreed to create a Far Eastern Commission (FEC) to supersede the FEAC. This new body was to have a review function over SCAP directives and decisions, but it was clear SCAP had the authority to issue directives and decisions. This meant that at least in theory, SCAP had the primary role in the occupation, and thus in organising the tribunals, however outside bodies had power to intervene in this. This meant that the prosecutors in selecting defendants understood that their decisions would be scrutinised and that outside intervention was possible.

While SCAP had authority over the tribunal itself, it was initially unclear what body should provide direction to the prosecution. The US favoured the SWNCC for this role, however the other Allied powers felt the FEC was the appropriate forum. The other Allies also felt lists of potential accused should be drawn up by inter-governmental agreement and attempted to use the FEC to try to assert some control over the process. In the end, the actual decisions were made through the International Prosecution Section (IPS), established on 8 December 1945 with assistance from GHQ's Legal Section, which at its height included 277 Allied attorneys, investigators and assistants and 232 Japanese employees.²²¹ The IPS was led, as noted earlier, by the Chief Counsel Joseph B. Keenan who was appointed by MacArthur on 7 December, and by the end of December Keenan had formulated and put his plan for selecting defendants into action. The IPS staffs were divided into eight working teams with specific assignments and instructions about the selection of suspected war criminals. Three working groups examined defined periods between 1930 and 1942 and investigated crimes against peace. Keenan assigned another four groups more than 100 Class A suspects and the groups were to prepare interrogations, draft indictments, and prepare detailed reports. The last group engaged in the collection and examination of official papers of the wartime governments and was

²²⁰ *JCS 1380/15*, paragraph 7(d).

²²¹ Takemae, *Inside GHQ*, p. 168.

not directly involved in selection.²²² By early December, 103 warrants had been issued by SCAP, and overall a total of 1,128 suspects accused of a wide range of offences were incarcerated, and of these more than half remained in detention for the duration of the trial.²²³ Arguably, detaining this many individuals was not solely that they were being seriously considered for trial, but as a form of punishment itself. However, it became apparent to the US prosecutors that their task was, as Meirion and Susie Harries described, “a far harder task than they, or the public at home, had been led to believe by allied wartime propaganda. They were not dealing in moralising generalities and absolutes of good and evil, but in the kind of guilt that is susceptible of legal proof in court.”²²⁴

Once other Allied prosecutors began arriving from late January 1946, they too became involved in the selection process. Despite the work already done by IPS prosecutors, there was a perception from the New Zealand Associate Counsel that “little progress had been made with the collection of evidence and the selection of Defendants,”²²⁵ and that “there had been very little planning and that there was lacking any competent leadership or direction.”²²⁶ Keenan provided each Associate Counsel with a memorandum detailing their responsibilities, which set out a responsibility to “assist in selection of persons to be indicted.”²²⁷ The memorandum also set out the selection procedure by which a majority of all prosecutors were to determine who or who was not to be a defendant, that if there was a tied vote then the prosecutor proposing the selection had the deciding vote, and that selections were to be subject to the final approval of MacArthur.²²⁸ Solis Horwitz (US junior prosecutor) corroborated this in his description of the selection process in operation.²²⁹ However, despite the memorandum, the actual selection work was done by

²²² K. Awaya, ‘Selecting Defendants for the Tokyo Trial’ in *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited*, ed. Y. Tanaka, T. McCormack, and G. Simpson, (Leiden, Martinus Nijhoff, 2011) pp. 57-62 at p. 58.

²²³ Takemae, *Inside GHQ*, p. 244.

²²⁴ M. and S. Harries, *Sheathing the Sword*, p. 124.

²²⁵ MB 1549, *Northcroft Collection*, Item 112497, *Report on the Proceedings of the I.M.T.F.E.* by Brigadier R.H. Quilliam, 4 April 1948, p. 2.

²²⁶ *Ibid.*, p. 3.

²²⁷ Chief of the Prosecution Section, IMTFE, to the Associate Prosecutors, 13 February 1946, reproduced in R. Kay (ed.), *The Surrender and Occupation of Japan: Documents on New Zealand External Relations, Volume II* (Wellington, Historical Publications Branch, Department of Internal Affairs, 1982) document 657, at pp. 1522-1523.

²²⁸ *Ibid.*, p. 1522.

²²⁹ Horwitz, *The Tokyo Trial*, at 495-496.

the IPS Executive Committee (EC), established on 2 March 1946, and composed of the Associate Counsel and senior US officials within IPS. This committee was established on the advice of the British Associate Counsel Arthur Comyns-Carr who had criticised the efficiency of the American staff, and thought it wise to establish a sub-committee of the IPS to consider indictments in detail.²³⁰

The EC was immediately faced with the problem that the prosecution had no clear criteria for selection and no information about what Keenan planned for the prosecution. The only guide to selection was the IMTFE Charter and its requirement that all accused be indicted for crimes against peace, and the EC quickly clarified to IPS that an individual voting for war in a cabinet vote was in itself insufficient for indictment.²³¹ Comyns-Carr also moved to help clarify selection by submitting a memorandum to the EC in which he argued that once a war of aggression was confirmed, then there was a presumption that any person who held any office in the civil or military organisation of Japan took part in the planning, preparation, initiation and waging of that war. Further, the question of whether someone was a major war criminal was entirely one of degree once the presumption was active. As to the actual selection, he suggested that the EC fix a limit on the number of accused for trial, and then consider each case both on its own merits and in comparison to the cases against other relevant persons to decide whether a particular individual should be indicted or not. The final selection should be balanced in that it should contain representatives of each period and phase of the conspiracy in proportion to the importance attached to each phase.²³² Other factors beyond these also guided the EC in the selection process. Solis Horwitz noted that those indicted should be 'principal leaders' with 'primary responsibility for the acts committed', and further that the case against them was to be such that the chances of acquittal were 'render[ed] negligible.'²³³

²³⁰ K. Awaya, 'Selecting Defendants for the Tokyo Trial' p. 59.

²³¹ Boister and Cryer, *The Tokyo IMT*, p. 53.

²³² 'Memorandum from Mr Comyns-Carr, to the Executive Committee, Subject: Selection of Accused', 1 April 1946, Box 1, Folder 4, IMTFE (IPS), Morgan, MSS 93-4, Law Library, University of Virginia, accessed at <http://lib.law.virginia.edu/imtfe/content/item-30-minutes-thirteenth-meeting-executive-committee> (last accessed 9 March 2015).

²³³ Horwitz, 'The Tokyo Trial', at 496.

Germany

The selection process undertaken before the release of the IMT Indictment was both similar and different to that of the IMTFE. The selection decisions before Nuremberg were made under similar considerations concerning how large the trial should be, whether sufficient evidence was available to indict, whether other individuals were better choices and under time constraints. Selection decisions were also made under similar political considerations in terms of how selection or non-selection might aid or hinder the political and social reforms intended as part of the occupation of Germany, and what the impact of failing to obtain a successful conviction might have. However, the way the process was conducted differed. Inter-Allied negotiations at the International Conference on Military Trials (London Conference) over the establishment of an international tribunal for the trial of German war criminals, decided the formal procedure for selecting defendants. These negotiations established the form of the tribunal and drafted the charges of the indictment. A major outcome of the London Conference was the London Agreement of 8 August 1945. This provided for the establishment of an International Military Tribunal for the trial of war criminals, whose constitution, jurisdiction, and functions were set out in the Charter annexed to the Agreement.²³⁴ Articles 14 and 15 of the *Charter of the International Military Tribunal* (Nuremberg Charter) provided for the constitution and role of the 'Committee for the Investigation and Prosecution of Major War Criminals'. These articles stipulated that each signatory was to appoint a 'Chief Prosecutor' for 'the investigation of the charges against and the prosecution of major war criminals.'²³⁵ These Chief Prosecutors had the duties of "investigation, collection and production before or at the Trial of all necessary evidence"²³⁶ and preparation of "the Indictment for approval by the Committee."²³⁷ The stated committee consisted of the Chief Prosecutors acting together in their roles set out in Article 14, of which the two most relevant roles for the selection process were "to settle the final designation of major war criminals to be tried by the Tribunal"²³⁸ and "to approve the Indictment and the documents to be submitted therewith."²³⁹ This committee began meeting formally from 9 August, and had officially

²³⁴ *London Agreement of 8 August 1945*, Article 2.

²³⁵ *Charter for the International Military Tribunal*, Article 14.

²³⁶ *Ibid.*, Article 15(a).

²³⁷ *Ibid.*, Article 15(b).

²³⁸ *Ibid.*, Article 14(b).

²³⁹ *Ibid.*, Article 14(c).

completed its work by 29 August when the final list of defendants was made public. However, the selection process also occurred outside of this period, and outside of the formal committee process. Important selection decisions were made both before and after August 1945 through bilateral discussions between the US and British delegations, and concerning the organisations that could be indicted under Article 9 of the *Nuremberg Charter*.

The selection process effectively took place in three parts. The first involved bilateral discussions between American and British officials in late June 1945 before the opening of the London Conference. The second involved the deliberations of the Committee created by Articles 14 and 15 of the *Nuremberg Charter* in August 1945. The third part involved the negotiations between the Allied prosecutors over drafting the indictment, and the inclusion of organisations in September and early October 1945. Bilateral discussions between American and British officials in late June 1945 resulted in the selection of the majority of the defendants before the IMT, and the individuals discussed represented the “core” of the final list of defendants. In preparation for the London Conference, and despite reluctance over the idea of a trial at all, the British delegation drafted a list of defendants focused on the idea of a Nazi conspiracy to dominate Europe. All of those suggested by the British were eventually included, but the fact there was a proposal at all threw US officials off-guard, as Jackson and the other officials were focused on obtaining agreement for the trial system as a whole and had not seriously considered specific defendants.²⁴⁰ Interestingly, the British proposal was made in such an informal fashion so it was assumed by the Americans that it was quickly drafted. Telford Taylor suggests that apparently little effort had been made to assess evidence by the British, or to meet the ‘need’ for adequate representation of organizations²⁴¹, though this is probably more suggestive of the near-obsession that the Americans had with their theory of organisational guilt. However, Bradley Smith argues that it was the product of extended discussions and a compromise between those wanting a very limited trial and those pushing for a larger one.²⁴² A counter-proposal was quickly drafted by the US delegation and presented to the British on 23 June with some additional names added.

²⁴⁰ B.H. Smith, *Reaching Judgment at Nuremberg* (New York, Basic Books, 1977), p. 49.

²⁴¹ Taylor, *The Anatomy of the Nuremberg Trials*, p. 86.

²⁴² Smith, *The Road to Nuremberg*, p. 62-3.

The US and British delegations largely agreed. However, the issue quickly went on the backburner with the arrival of the French and Soviet delegations and the complex negotiations over the Nuremberg Charter from late June.

The second stage of the process took place in early August during the London Conference. The Allied leaders had agreed at Potsdam that defendant selection was best left to the delegations in London.²⁴³ However, in discussions in London on 1 August, Stalin's suggestion that within one month the final list of war criminals would be published was agreed upon.²⁴⁴ This gave an impetus to the delegations to finalise the proposed defendants and the indictment itself as this was expected by the end of August. The selection decisions were also aided by the fact that by early August, the negotiations over the Nuremberg Charter had largely finished and the Nuremberg Charter itself finalised on 8 August. This allowed the delegations to refocus their attention onto the issues of defendant selection, and aided by the increased availability of more substantial documentary evidence.²⁴⁵ This stage saw a series of negotiations over several issues with a definitive list appearing based on the Anglo-American discussions in June with twenty-two names decided by 23 August, and two last-minute additions prompted by the Soviet delegation added to the final indictment made public on 29 August.²⁴⁶ The third stage of the process concerned the issue of indicting organisations, as this was the core of the original Bernays Plan and a particular focus of US thinking. However, there was little discussion about the specific organisations at this time or during August. The issue of specific organisations arose in connection with the drafting of the Indictment in September 1945, and were largely concerned with attempting to delineate suitable organisations for indictment. Taylor notes that initially the *NSDAP* was "deemed the driving force of the conspiracy, but it was a huge organization with many members who joined for reasons of expediency and played little or no part in its doings."²⁴⁷ Discussions revolved around what organisations should be included with the British unconvinced by

²⁴³ United States Department of State, *Foreign Relations of the United States: diplomatic papers: the Conference of Berlin (the Potsdam Conference), 1945 Volume II*, (U.S. Government Printing Office, 1945), pp. 525-27.

²⁴⁴ *Ibid.*, 'Thompson Minutes' pp. 566-578 at p. 573.

²⁴⁵ Smith, *The Road to Nuremberg*, p. 65. [lack of evidence had meant that some of those on the final list were excluded in the earlier bilateral discussions]

²⁴⁶ *New York Times*, August 29 1945, 'Nazi Criminal List set for Publication' p. 10.

²⁴⁷ Taylor, *The Anatomy of the Nuremberg Trials*, p. 104.

arguments that a wider range of organisations than elements of the *NSDAP* and paramilitaries should be indicted.²⁴⁸ This stage concluded with the final form of the indictment on 6 October.

The most important difference between defendant selection at the IMT and IMTFE was the indictment of organisations as well as individuals. Overall, the focus for US prosecutors in selecting defendants was more around the organisational concept, rather than being based on an understanding of a particular individual's culpability or the gravity of their actions, or on the specific charges in the indictment. In the negotiations before the IMT, US prosecutors made their defendant selection on a clear pre-conceived outline of how the prosecution was to proceed. This outline was based around the conspiracy concept conceived by Bernays in June 1944. As discussed earlier, this argued that particular agencies and institutions should be charged with conspiracy to commit particular offences with the intention this would facilitate efficient 'denazification'. The issue was also discussed within the UNWCC, with a draft recommendation from the French representative adopted 16 May 1945.²⁴⁹ Drexel Sprecher notes, "the principal object of the Prosecution was to make it easier to conduct later trials of the numerous members of these organizations."²⁵⁰ This was reinforced by the 22 January 1945 Memorandum which recommended the trial program to Roosevelt. Within this was the particular recommendation of a two-stage process, the first of which was an international tribunal of "the highest ranking German leaders to a number *fairly representative of the groups and organizations charged with complicity in the basic criminal plan.*"²⁵¹ In his 6 June 1945 report to President Truman, Jackson argued, "We also propose to establish the criminal character of several voluntary organizations which have played a cruel and controlling part in subjugating first the German people and then their neighbors."²⁵² Jackson's proposal for dealing with the accused organisations was to prove how they were involved and how they operated should be deemed criminal. Based on this, Jackson

²⁴⁸ Taylor, *The Anatomy of the Nuremberg Trials*, p. 104.

²⁴⁹ See N.H.B. Jørgensen, *The Responsibility of States for International Crimes*, (New York, Oxford University Press, 2000) p. 60.

²⁵⁰ D.A Sprecher, *Inside the Nuremberg Trial: A Prosecutor's Comprehensive Account, Volume 1*, (Lanham, University Press of America, 1999), p. 422.

²⁵¹ *Ibid.*, p. 32. [my emphasis].

²⁵² *Report to the President by Mr. Justice Jackson, June 6, 1945*, <http://avalon.law.yale.edu/imt/jack08.asp> (last accessed 9 April 2015).

argued, “Findings in the main trial that an organization is criminal in nature will be conclusive in any subsequent proceedings against individual members...In United States war-time legislation, this principle has been utilized and sustained as consistent with our concept of due process of law.”²⁵³

Those who were indicted

Japan

The final indictment was released on 29 April 1946, with a list of twenty-six confirmed by the EC on 8 April and two further individuals added on Soviet insistence after 13 April.²⁵⁴ The twenty-eight accused were split between nine civilian and nineteen military figures, which was the reverse of the balance at the IMT.²⁵⁵ Of the nineteen military figures, eleven had been members of the Supreme War Council and eight had held wartime commands with five Navy and fourteen Army officers. Eight of the latter held Cabinet positions and two had been Prime Minister. The nine civilian accused were more varied: one was a journalist and academic, four were career diplomats, three were Foreign Ministers, one was a minor minister, one was part of the Imperial Household, and two were involved with economic planning and development. Overall, four Prime Ministers were indicted and assuming Prince Konoe had been alive and indicted, every serving Prime Minister from June 1937 to August 1945 would have been included (barring three who had served short terms). As a group, the indicted came from a range of backgrounds and the individual indictments spanned the whole period of the purported conspiracy. As Boister and Cryer noted, “from corporal to Privy Seal, colonel to field marshal, they made an odd assortment.”²⁵⁶ Given the length of the purported conspiracy, the range and nature of its activities, and the amorphous nature of the

²⁵³ *Report to the President by Mr. Justice Jackson, June 6, 1945.*

²⁵⁴ The indicted were General Araki Sadao, General Doihara Kenji, Colonel Hashimoto Kingoro, Field Marshal Hata Shunroku, Baron Hiranuma Kiichirō, Hirota Kōki, Hoshino Naoki, General Itagaki Seishiro, Kaya Okinori, Kido Kōichi, General Kimura Heitaro, Koiso Kuniaki, General Matsui Iwane, Matsuoka Yōsuke, General Minami Jirō, General Mutō Akira, Admiral Nagano Osami, Admiral Oka Takasumi, Ōkawa Shūmei, Ōshima Hiroshi, General Sato Kenryo, Shigemitsu Mamoru, Admiral Shimada Shigetarō, Shiratori Toshio, General Suzuki Teiichi, Tōgō Shigenori, General Tōjō Hideki, and General Umezū Yoshijiro. The Soviet delegation insisted on the inclusion of five individuals, and were successful in having Shigemitsu and Umezū added to the indictment despite these two having already been considered and not selected by the EC previously.

²⁵⁵ Boister and Cryer, *The Tokyo IMT*, p. 60.

²⁵⁶ *Ibid.*

'militarists', the indicted might better be analysed as representatives of several interrelated groups. Some of these groups are the 'rise to power' group involved with controlling government, that involved with the war in China from 1937-45, that involved with the beginning of the Pacific War in late 1941, that responsible for diplomacy that resulted in the Anti-Comintern Pact, that responsible for economic and financial affairs relating to imperial expansion, that responsible for propaganda and education, that involved in specific large-scale war crimes, and that involved with civilian/military co-operation. The first and last groups are worth exploring in more detail because of the way that resonates with the victim thesis.

The 'rise to power' group was the largest and one of the most important because it aimed at explaining how the militarists came to power through conspiratorial means and took power away from democratically elected governments. This period of the conspiracy essentially made the rest of the conspiracy possible, and this aspect of the prosecution saw some of the strongest rhetoric of victimisation used. One event in particular, the Mukden Incident, was particularly important within this 'rise to power' narrative. Seven individuals were specifically indicted in relation to their involvement in this event. Araki Sadao was the sitting Minister of War during the Incident and oversaw the expansion of the Japanese occupation in 1931-2. Three of the key plotters were indicted with Doihara Kenji as the commander of the Kwangtung Army's intelligence unit and one of the instigators. Hashimoto Kingoro, considered the "prime mover and chief agitator of the aggressive expansion movement in Japan"²⁵⁷ and "the dynamo of Japanese militarism,"²⁵⁸ and one of the key players in the Incident.²⁵⁹ Itagaki Seishiro, like Doihara, was considered key plotters within the Kwangtung Army as Chief of the Intelligence Section and was accused because of his role in fostering the puppet state of Manchukuo. Koiso Kuniaki was identified as having played a key role in the March Incident in 1931, and like Itagaki indicted for his role in Manchuria after 1931. Minami Jirō was War Minister during

²⁵⁷ Boister and Cryer, *The Tokyo IMT*, p. 57.

²⁵⁸ 'Brief Outline of Acts in the Career of Dr Shumei Okawa', 15 March 1946, Box 1 IMTFE (IPS) Investigative Information about Miscellaneous Individuals, MSS 93-4, Law Library, University of Virginia, accessed at <http://lib.law.virginia.edu/imtfe/content/item-1-brief-outline-acts-career-dr-shumei-okawa>, (last accessed 4 February 2014) p. 3.

²⁵⁹ Hashimoto seems not to have been one of the actual plotters, but he was a driving force in the failed October coup connected to the Mukden Incident, see Coox and Hata, 'Continental expansion 1905-1941', pp. 271-314, at p. 294.

the Incident and accused of being a part of the plot and willingly failing to implement government policies to prevent the Incident from escalating into a full-scale invasion, and because of his role in Manchuria post-1931. Ōkawa was the only civilian indicted, and alleged to have been connected to the Mukden Incident as a key instigator of the plot, and was involved with other incidents of military intimidation during the 'rise to power' period. Most of these individuals were indicted for other alleged offences beyond the Mukden Incident, and even outside the 'rise to power' period, but it is clear from the indictment that a primary basis for their inclusion was in connection to the Mukden Incident and/or the subsequent invasion and occupation of Manchuria. Despite the formal start of the conspiracy in 1928, the prosecution narrative placed the Mukden Incident as the logical and key starting point of the militarist conspiracy.²⁶⁰

Another interesting group is the representatives of civilian/military co-operation during the conspiracy period. The prosecution argued that the militarists had undermined civilian authority in Japanese government from 1931 that enabled their gradual takeover of control. Part of this was the argument that certain civilian ministers and officials had co-operated with the militarists out of shared ideals or self-preservation. This was to be contrasted with those civilian officials who were intimidated, threatened and physically attacked by the militarist conspirators in the early period of the conspiracy, several of whom acted as important prosecution witnesses.²⁶¹ Three individuals in particular were part of this group; Baron Hiranuma Kiichirō led the Privy Council during the 1930s, and was Prime Minister for the first half of 1939. He was accused of "'drift[ing] along with the tide of Japanese expansion and in doing so had contributed materially to the Japanese Expansion Program."²⁶² Hirota Kōki was Foreign Minister from 1933-7 and 37-8, but more importantly was Prime Minister in the aftermath of the 2.26 Incident in 1936-7. The third figure was Marquis Kido Kōichi. As chief secretary to the Lord Privy Seal (1930-40) and Lord Privy Seal (1940-5) he was the chief political adviser to Hirohito during most of the conspiracy and highly influential given constitutional protocol about Hirohito's

²⁶⁰ Keenan's comments in Brackman, *The Other Nuremberg*, p. 56.

²⁶¹ Baron Okada is an obvious example, as the Prime Minister who was an intended target in the 2.26 Incident.

²⁶² Valentino C Hammack, 'Report of Evidence Relating to Baron Kichiro Hiranuma', 15 March 1946, Box 8 Folder 3, MSS78-3, Tavenner, Law Library, University of Virginia, accessed at <http://lib.law.virginia.edu/imtfe/content/item-1-report-evidence-relating-baron-kiichiro-hiranuma> (last accessed 5 February 2014) p. 2.

exercise of power. Hirota is the most interesting of these individuals, as he was the only civilian to be sentenced to death by the IMTFE. This was probably because of his connection to the Rape of Nanking, although the primary reason for his indictment was probably his actions as Prime Minister. In the aftermath of the 2.26 Incident, Hirota played a key role in realising militarist aims through the promulgation of the 'Fundamental Principles of National Policy' on 30 June 1936. The Majority Judgment described the Policy as meaning "The fundamental principle of national policy was to be the strengthening of Japan, both internally and externally, so that the Japanese Empire would "develop into the stabilization power, nominal and virtual, in East Asia, secure peace in the Orient and contribute to the peace and welfare of mankind throughout the world."²⁶³ The other important event concerning civilian acquiescence that Hirota was involved with was the reinstitution of the 'active-duty' provision (that the War and Navy Ministers had to be active duty officers).²⁶⁴ This was done through an Ordinance promulgated on 18 May requiring that War and Navy Ministers be on the active list of the rank of Lieutenant-General or above.²⁶⁵ This meant that militarists in the Army and Navy were able to control both who became Army and Navy Minister, and therefore directly control civilian governments with the implicit threat of ending a government which opposed them. The IMTFE described this as "plac[ing] in the hands of the military authorities a weapon which could make or break governments without recourse to the methods of intimidation which had led Okada to resign."²⁶⁶ For the prosecution, Hirota was emblematic of civilian leaders submitting to military control of government and thereby enabling and taking part in their aggression. Comyns-Carr was particularly scathing in the Prosecution's Reply to Defence Motions. He argued that Hirota was present at three of the major Ministerial Conferences in 1936 and responsible for all of them given that he was Prime Minister.²⁶⁷ He argues "this was the first time that these policies were formally adopted by a government, and show Hirota as *their official*

²⁶³ MB 1549, *Northcroft Collection*, Item 112603, *Judgment and Annexes, Part B, Chapter IV*, p.53.

²⁶⁴ Edward J. Drea, *Japan's Imperial Army: Its Rise and Fall 1853-1945*, (Lawrence, University Press of Kansas, 2009) p. 129.

²⁶⁵ *Judgment and Annexes, Part B, Chapter IV*, p. 51.

²⁶⁶ *Ibid.* Ironically, Hirota's own government came to end precisely because of this Ordinance, with the resignation of War Minister Hisaichi Teruuchi over the Diet's refusal to pass a major military reform program.

²⁶⁷ These concerned the formation and promulgation of the National Policy.

godfather, if not their originator."²⁶⁸ Comyns-Carr concluded his discussion on Hirota arguing, "In our submission, he was an aggressor from start to finish, and the contrast between his public and private words and acts show he was a particular clever one."²⁶⁹

Germany

The list of those indicted before the IMT was primarily decided upon in the first and second stages of the selection process for the IMT. The final indictment included the individuals Martin Bormann, Karl Dönitz, Hans Frank, Wilhelm Frick, Hans Fritzsche, Walther Funk, Hermann Göring, Rudolf Hess, Alfred Jodl, Ernst Kaltenbrunner, Wilhelm Keitel, Gustav von Krupp, Robert Ley, Constantin von Neurath, Franz von Papen, Erich Raeder, Joachim von Ribbentrop, Alfred Rosenberg, Fritz Sauckel, Hjalmar Schacht, Baldur von Schirach, Arthur Seyss-Inquart, Albert Speer, and Julius Streicher. The first stage discussions resulted in a list of sixteen (including Hitler whose death was not confirmed at this stage, and later dropped in August). The 21 June British proposal included Frank, Frick, Göring, Hess, Kaltenbrunner, von Ribbentrop, Ley, Rosenberg, and Streicher. The 23 June US counter-proposal added Dönitz, Funk, Schacht, Seyss-Inquart, and Speer. The August London Conference discussions and late Soviet intervention added a further nine names on French and Soviet insistence: Bormann, Fritzsche, Jodl, a Krupp²⁷⁰ von Neurath, Raeder, von Papen, Sauckel, and von Schirach. Like the IMTFE accused, the IMT accused comprised several interrelated groups based on their actions and/or roles. Roughly, these groups were *NSDAP* leaders, those involved with the *SS* and the Holocaust, forced labour, economic and financial issues, propaganda, the military, and 'civilian helpers'. However, unlike the IMTFE accused, the IMT accused were a much less amorphous group because they were all connected through the *NSDAP*. This meant the prosecution narrative and arguments were much more focused on the *NSDAP* as an organisation, and while the conspiracy argument was applied, it was a conspiracy of the

²⁶⁸ MB 1549, Northcroft Collection, Item 112492, *Prosecution documents: Reply to Defence's Motions (IPS Document Number 0003)*, p.52 [my emphasis].

²⁶⁹ *Ibid.*, p. 54.

²⁷⁰ There was some confusion over whether the intention was to indict Gustav Krupp von Bohlen und Halbach the active head of the Krupp firm in the prewar and early war periods, or his son Alfried who had essentially taken over from 1943. The former was 75 and suffering from dementia, while his son was heavily implicated in plunder of occupied territories and use of slave labour. In the end, because of miscommunication where the British mistakenly placed Gustav on the indictment and the Americans assumed they meant Alfried, Gustav was indicted and found unfit for trial while Alfried escaped indictment by the IMT. He was later tried in the Subsequent Nuremberg Proceedings. See Taylor, *The Anatomy of the Nuremberg Trials*, pp. 90-94.

NSDAP and fellow travellers rather than a vague group of ‘militarists’. The composition of the accused was also influenced by the difference in actions undertaken, as while both the *NSDAP* and militarists were accused of planning and engaging in aggressive war, exploitation of occupied territories, and systematic war crimes, the actions of the *SS*, Gestapo, and the Holocaust clearly stood out as a stark difference. While militarist Japan had its own secret police bodies who engaged in internal repression, their actions seemed to pale in comparison to the crimes of the *SS*, and there was no clear analogue to the Holocaust in the Asia-Pacific region for the prosecutors. Individual accused might be a member of multiple groups, for example the indictment of Hermann Göring stated

He promoted the accession to power of the Nazi conspirators and the consolidation of their control over Germany set forth in Count One of the Indictment; he promoted the military and economic preparation for war set forth in Count One of the Indictment; he participated in the planning and preparation of the Nazi conspirators for Wars of Aggression and Wars in Violation of International Treaties, Agreements, and Assurances set forth in Counts One and Two of the Indictment; and he authorized, directed, and participated in the War Crimes set forth in Count Three of the Indictment; and the Crimes against Humanity set forth in Count Four of the Indictment, including a wide variety of crimes against persons and property.²⁷¹

This would place Göring within almost all of the groups suggested above, as he was involved in many aspects of the *NSDAP* state. The selection of the accused also in part emphasises the victim thesis through the selection of defendants who were purported to have been part of the *NSDAP*’s rise to power and its domination and control of the German people in different ways. The inclusion of police officials for their internal actions, those involved in education (von Schirach as head of the *Hitlerjugend* for example), or ‘civilians’ (i.e. those who were not quite ardent *NSDAP* members) such as Schacht and von Papen who had aided the *NSDAP*, suggests that an emphasis on German victimhood was part of the selection criteria.

Unlike the IMTFE, organisations were indicted as legal persons by the IMT. Six were eventually chosen after recommendations were made for the addition of the *Reichsregierung*, the *Deutsche Arbeitsfront* (Labour Front), the *Einsatzstab Rosenberg*²⁷²,

²⁷¹ *Nuremberg Indictment*, Appendix A: Statement of Individual Responsibility for Crimes Set Out in Counts One, Two, Three, and Four.

²⁷² A special staff set up under Rosenberg for looting art works.

and the General Staff of the Armed Forces.²⁷³ The British delegation rejected all of these suggestions apart from the *Reichsregierung*, and the draft form of the Indictment included five organisations: the Leadership Corps of the *NSDAP*, the *Reichsregierung*, the *SS*, the *Gestapo* and the *SA*.²⁷⁴ This draft was approved in a meeting of the four delegations on 2 October, however in the evening Jackson telephoned from Nuremberg demanding the inclusion of the General Staff.²⁷⁵ Although the British had strong objections to this inclusion,²⁷⁶ the Americans were able to obtain French and Soviet assent and the General Staff was added (the British withheld assent until 9 October).²⁷⁷ The final form of the Indictment was signed on 6 October and included six organisations; the Leadership Corps, *Reichsregierung*, the *SS* (including the *SD*²⁷⁸), the *Gestapo*, the *SA*, and the 'General Staff and High Command of the German Armed Forces'.²⁷⁹ The prosecutors hoped that findings of guilt of these organisations would aid efforts to punish the wider membership. Jackson noted that "the action of this Tribunal in declaring, or in failing to declare, an accused organization criminal has a vital bearing on this future occupation policy" and the spirit of the Nuremberg Charter was to use the trial process to identify and condemn forces which constituted a threat to Allied objectives.²⁸⁰ The question of whom to indict in terms of organisational guilt was clearly understood by those who made the decisions who should be indicted as being meaningful beyond the proceedings of the IMT.

Those who were not selected

Lack of inclusion in the indictments could be as important as inclusion, and the issue of who was not indicted and the reasons why can illuminate the ideas underpinning the international criminal tribunals, and the wider connections to the objectives and methods of the occupiers in political and social reconstruction. The reasons behind non-selection

²⁷³ Taylor, *The Anatomy of the Nuremberg Trials*, p. 104.

²⁷⁴ Ibid.

²⁷⁵ Ibid., Smith, *The Road to Nuremberg*, p. 70.

²⁷⁶ While the British had no issue with targeting the institutions themselves in reforms generally, they were opposed to indicting them as criminal organisations on the same level as the *Gestapo* and *SS* (noting also that some members had opposed Hitler), Taylor, *The Anatomy of the Nuremberg Trials*, p. 113.

²⁷⁷ Smith, *The Road to Nuremberg*, p. 70.

²⁷⁸ *Der Sicherheitsdienst*, the intelligence agency of the *SS* and *NSDAP*.

²⁷⁹ Appendix B – Statement of Criminality of Groups and Organizations, *Indictment, International Military Tribunal*, <http://avalon.law.yale.edu/imt/count.asp> (last accessed 9 April 2015).

²⁸⁰ *Trial of the Major War Criminals, Volume VIII, Proceedings 20 February – 7 March 1946*, pp. 356-357. The idea was not that every single member would then be punished, but rather if they faced punishment, their membership of a proscribed organisation was a presumption of guilt to be rebutted.

might have been practical in that the decision was the individual was not guilty of the charges, or rather that the likelihood of acquittal was high enough to warrant not wasting the effort. This might also have been made on the consideration that given the limited and representative nature, other individuals were more 'worthy' of indictment because of their superior formal position or more proximate connection to what had taken place. In the case of the IMTFE, the prosecutors were working on the assumption that there would be future Class A trials and if a particular individual was not selected, they still might be prosecuted in the future. As the prosecutors knew they could not include every individual detained in the IMTFE, some selection criteria were formulated and the prosecutors sought to ensure that those who were selected met all of these criteria. This meant those who met some but not all of these criteria were not included in the *IMTFE Indictment*, though they might be prosecuted in a future Class A trial, though these never occurred. Solis Horwitz noted the initial target for the final selection was fifteen defendants, but the complexity and length of the period in the indictment, and the number of perceived 'important events' within this meant that the final selection numbered twenty-eight. Even with the final selection of twenty-eight defendants, the need to represent the entire period meant that tough choices had to be made. Horwitz noted four particular criteria; that the individual could be charged with crimes against peace, the desire for a representative group, that they be principal leaders and have primary responsibility, and that there be a strong case against them so as to make acquittal unlikely.²⁸¹

The most important in practical terms were the latter three, although the first was important given the criticism directed at the IMTFE for excluding consideration of particular issues (such as 'comfort women').²⁸² However, as the Tokyo trial intended to focus on aggressive war and particular war crimes relating to this²⁸³, the lack of trials relating to 'comfort women' and other crimes against humanity relates more to problems connecting these crimes specifically with crimes against peace, and with later decisions against holding further trials. Chief Counsel Keenan noted, "It was necessary...to separate the major war criminals from those "who sinned more grievously in the matter of occupation tasks and the mistreatment of prisoners." The latter group...was better dealt

²⁸¹ Horwitz, 'The Tokyo Trial', 496

²⁸² Dower, *Embracing Defeat*, p. 465; Boister and Cryer, *The Tokyo IMT*, pp. 63-64.

²⁸³ Boister and Cryer suggest that exclusion of some issues such as comfort women was on the basis that the atrocities against civilians could not be characterised as war crimes.

with in large U.S. military tribunals.”²⁸⁴ The desire for a representative group combined with the desire to include ‘principal leaders with primary responsibility’ was an important practical motivation for non-selection. Given the number of potential defendants and the structure of the prosecution case around the idea of a long-running conspiracy involving many different individuals at different times, it was important that the selection reflect this. This meant that in some cases, individuals were not selected for indictment because it was felt they did not fit this model adequately, or that other individuals were more appropriate. Comyns-Carr argued in his Memorandum “in view of the necessary limitation in numbers, I think it is desirable to choose as far as possible those Defendants who do so in preference to those who only represent one.”²⁸⁵ The desire for an appropriately representative group led prosecutors to exclude some individuals in favour of others. An example of this is the exclusion of Furuno Inosuke, president of *Dōmei* (the state news agency) involved in propaganda and censorship. Minutes of EC meetings suggest that his exclusion was largely on the basis that Mutō Akira’s inclusion covered responsibility for propaganda already.²⁸⁶ Awaya argues that Kishi Nobusuke, minister of commerce and industry in the Tōjō cabinet was in part excluded because Hoshino Naoki, with a similar background, had already been selected.²⁸⁷

Reasons for non-selection could also be political in that they were more about wider political issues such as the wishes of an Allied government or the wider objectives of political and social reconstruction. A prime example of non-selection on political grounds was the non-selection of Hirohito, and the wider protection of the Imperial institution. An important part of the political aspects of the occupation was both reforming the political system of Japan, but also retaining and utilising perceived ‘moderate’ elements of the existing system. As discussed in the previous chapter, an important part of how the US understood pre-1945 Japan and the causes of the Pacific War was the victim thesis that posited that a group of militarists had taken control of the state and government. A

²⁸⁴ “Keenan Sketches Crimes Trial Aims,” *Pacific Stars and Stripes*, Jan 10 1946, pp. 1-2.

²⁸⁵ ‘Memorandum from Mr Comyns-Carr, to the Executive Committee, Subject: Selection of Accused’.

²⁸⁶ Minutes of the Thirteenth Meeting of Executive Committee, 1 April 1946, Box 1, Folder 3, MSS 93-4, Morgan, Law Library, University of Virginia, accessed at <http://lib.law.virginia.edu/imtfe/content/item-30-minutes-thirteenth-meeting-executive-committee> (last accessed 9 April 2015).

²⁸⁷ K. Awaya, ‘The Real and False Images of the “Brave General” Shinzaburo Masaki’, ‘Tokyo Saiban eno Michi’ No 23, *Asahi Journal*, 22 March 1985, 42-45, cited from Boister and Cryer, *The Tokyo IMT*, p. 62. Kishi went on to become Prime Minister of Japan 1957-60 after being amnestied in 1952. The current Prime Minister Abe Shinzō is Kishi’s grandson.

corollary to this idea was that it essentially could be reversed by removing said militarists and allowing politically moderate groups to take charge of government. The prosecution then avoided indicting figures who potentially were part of the purported conspiracy to avoid political moderates who might be useful in the reform of the political system. Connected to this idea of protecting political moderates was the protection of the Imperial institution. Maga argues the decision was “intimately linked to the Occupation Government's larger endeavor to reform the entire political-economic infrastructure of defeated Japan”²⁸⁸ and Hirohito's retention sat at the core of this endeavour.

Richard Minear argued, “the decision to exclude the emperor was a political decision, not a decision based upon the merits of the case”²⁸⁹ Minear noted that Chief Counsel Keenan later admitted that on a strict legal basis, Hirohito's indictment was not problematic. Allied opinion (both public and official) opinion favoured Hirohito's indictment. A US senator introduced a joint resolution declaring that Hirohito should be tried as a war criminal, and the Australian and New Zealand governments were strongly in favour of indictment.²⁹⁰ However, Allied opinion was not monolithic, as the Soviets were relatively ambivalent and Stalin instructed that the delegation was only to call for indictment if the Americans did.²⁹¹ Interestingly, the Republic of China was also ambivalent, perhaps because Chiang Kai-Shek saw some value in Hirohito as a check against communism.²⁹² Demands for Hirohito's indictment came from within Japan as well, as those who sought to shield the Imperial institution did not represent all. Japanese progressives backed his indictment²⁹³ and the IPS even received letters from Japanese citizens backing Hirohito's indictment.²⁹⁴

²⁸⁸ Maga, *Judgment at Tokyo*, p. 35.

²⁸⁹ Minear, *Victor's Justice*, p. 113.

²⁹⁰ Inoue Kyoko, *MacArthur's Japanese Constitution*, (Chicago, University of Chicago Press, 1991), p.161, and Boister and Cryer, *The Tokyo IMT*, p. 65.

²⁹¹ Bix, *Hirohito and the Making of Modern Japan*, p. 593.

²⁹² Ibid., p.594. See also K. Awaya and NHK Shuzaihan, 1994, NHK Supesharu: Tōkyō Saiban e no Michi [NHK Special: Road to the Tokyo Trial], Tokyo, Nihon Hōsō Shuppan Kyōkai, pp. 60-72.

²⁹³ *Asahi Shimbun*, 13 April 1946.

²⁹⁴ Item 11 - Requests that the Emperor be Tried as a War Criminal and Class A Criminals be Severely Punished, Box 3, Folder 3, MSS 93-4, Morgan, University of Virginia, Law Library accessed at <http://lib.law.virginia.edu/imtfe/content/item-11-requests-emperor-be-tried-war-criminal-and-class-criminals-be-severely-punished> (last accessed 9 April 2015).

The decision against Hirohito's indictment was an American one given their dominant role within the occupation as a whole. One narrative of this decision was that it had already been made before the prosecutors even began considering defendants.²⁹⁵ This however ignores the ambivalence evident in US planning and reforms about Hirohito's position that reflected ongoing debates about Japan and its future. The Japan Crowd in particular emphasised Hirohito as an unwitting pawn of the militarists and for that reason, advocated against his prosecution.²⁹⁶ Before 1946, there was no specific directive against Hirohito's indictment and what was expressed was conflicted and ambiguous. George Atcheson Jr., then a State Department adviser with SCAP, in a 5 November 1945 telegram to President Truman, argued

As for the Emperor, there would be certain advantages in having him continue in office until the Constitution is revised and launched in order that revision may be expedited through his influence and given sanction under the existing legal framework.²⁹⁷

In *JCS 1512*, the Joint Chiefs ordered MacArthur to take no action against Hirohito as a war criminal, pending a special directive.²⁹⁸ However, on 29 November 1945, the Joint Chiefs informed MacArthur that Hirohito was not immune from prosecution and to begin gathering evidence for his trial.²⁹⁹ Effectively, US policy toward Hirohito at this point was ambivalent in that there does not seem to have been a settled decision on trial, rather that MacArthur should prepare for Hirohito's trial but not indict him without direct authorisation. A clear decision against Hirohito's indictment was made at the end of January 1946, after the Australian representative to the UWNCC had made a formal recommendation for Hirohito's indictment.³⁰⁰ In a secret telegram reply to *JCS1380/15* on 25 January, MacArthur stated to Army Chief of Staff Dwight D. Eisenhower that "no specific and tangible evidence has been uncovered with regard to [Hirohito's] exact activities" and further he felt "his connection with affairs of state up to the time of the end of the war was largely ministerial and automatically responsive to the advice of his

²⁹⁵ Minear, *Victor's Justice*, p.111.

²⁹⁶ See previous chapter.

²⁹⁷ The Acting Political Adviser in Japan (Atcheson) to President Truman, Tokyo November 5, 1945, *Foreign Relations of the United States : diplomatic papers, 1945. The British Commonwealth and the Far East (1945) Volume VI*, (U.S. Government Printing Office, 1945), pp. 825-827 at pp. 826-827.

²⁹⁸ *Joint Chiefs of Staff Directive 1512*, 29 November 1945.

²⁹⁹ Takemae, *Inside GHQ*, p. 257.

³⁰⁰ Boister and Cryer, *The Tokyo IMT*, p. 65.

counsellors.”³⁰¹ MacArthur then argued both practical and political problems that would be created by proceeding with Hirohito’s trial. MacArthur contended “His indictment will unquestionably cause a tremendous convulsion among the Japanese people, the repercussions of which cannot be overestimated. He is a symbol which unites all Japanese. Destroy him and the nation will disintegrate.”³⁰² MacArthur suggested that indicting Hirohito would prompt civil unrest and potentially armed resistance against the occupation, and leave Japan vulnerable to communist takeover, and practically might require a huge increase in Allied military and civil personnel, at a time of large-scale American demobilization. Most importantly, Hirohito’s indictment would undermine the core task of the Occupation, which MacArthur phrased as “the introduction of modern democratic methods.”³⁰³ From this point on, barring direct order from Washington, the unofficial policy of SCAP was against Hirohito’s indictment and this became the direct policy of the FEC on 4 April 1946 as well.³⁰⁴

MacArthur later claimed the credit for this decision. However, Takemae contended that the January telegram “was probably the determining factor in Washington’s decision not to try the monarch.”³⁰⁵ Yet, MacArthur was certainly not alone within the highest levels of SCAP in advocating against Hirohito’s indictment. Takemae highlights the influence of MacArthur’s military secretary Brigadier Bonner Fellers who made multiple recommendations to MacArthur on October 1945 arguing against Hirohito’s prosecution.³⁰⁶ Fellers was convinced that the Imperial institution was the spiritual core of the nation and indispensable in aiding the occupation and its intended reforms. In a 1944 orientation manual intended for use by occupation troops, Fellers argued that the emperor could be turned into an instrument to achieve peace, but first had to be released from the hold of the militarists who were truly responsible for aggressive war.³⁰⁷ Bix contends that the basis of MacArthur’s decision went as far back as April 1945, where

³⁰¹ ‘General of the Army Douglas MacArthur to the Chief of Staff, United States Army (Eisenhower) Tokyo 25 January 1946, *Foreign Relations of the United States VIII (1946) The Far East*, (U.S. Government Printing Office, 1946), pp. 395-398, at p. 396.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ *FEC 007/4*, 4 April 1946, cited from Boister and Cryer, *The Tokyo IMT*, p. 66, n 167.

³⁰⁵ Takemae, *Inside GHQ*, p. 258, MacArthur’s claim at Douglas MacArthur, *Reminiscences*, (New York, McGraw-Hill, 1964) pp. 297-8.

³⁰⁶ Ibid., p. 259.

³⁰⁷ Alison B. Gilmore, *You Can’t Fight Tanks with Bayonets: Psychological Warfare Against the Japanese Army in the South Pacific*, (Lincoln, University of Nebraska Press, 1998) p. 52.

MacArthur and Fellers began drafting Operation Blacklist³⁰⁸, and that as part of the aim of utilising existing government organs, Hirohito was to be immunized from war responsibility.³⁰⁹ MacArthur's opposition to Hirohito's indictment was certainly influential given his position but his was not the only voice. An important influence on the decision to not indict Hirohito came from Japanese officials. An important motivation for Japanese co-operation appears to have been aimed at shielding Hirohito and the Imperial institution, and co-operators included some of the accused. Takemae argues that Hirohito's non-selection was the result of "a concerted effort on the part of the Throne, Japanese civilian and military leaders and the highest echelons of SCAP to protect the person of the Emperor, and preserve the Imperial dynasty."³¹⁰ Important Japanese collaborators worked to bury incriminating evidence, and through co-operation, direct the prosecution away from Hirohito. The Imperial aide Terasaki Hidenari who acted as Court liaison to SCAP was especially influential, collaborating with Fellers and working with Roy Morgan, Chief of the Investigative Division of IPS to relay the views of the Court and pass along information.³¹¹ The prison depositions of detained potential defendants also sought to downplay Hirohito's role and direct attention toward particular individuals, as did the depositions of important prosecution witnesses such as Admirals Yonai Mitsumasa and Okada Keisuke.³¹² Even the defendants sought to protect Hirohito during their depositions and the trial itself. John Dower argues that Kido's co-operation with the IPS was likely motivated by the idea of shielding Hirohito, initially by pleading guilty and later by declaring his innocence while handing over his diaries, which Dower suggests Kido might have vetted to help his arguments about Hirohito's innocence.³¹³ During the trial itself, both prosecution and defence witnesses often avoided the subject of Hirohito's culpability and at points where it was raised, it was quickly repressed. Even the prosecutors, as shown by an episode during questioning of Tōjō where he made a comment that no Japanese subject or high official would oppose the will of the emperor,

³⁰⁸ The proposed plan in the scenario of the sudden collapse or surrender of the Japanese government.

³⁰⁹ Bix, *Hirohito and the Making of Modern Japan*, p. 545. Bix's citation on this however gives no reference to the text of Operation Blacklist itself that mentions retaining Hirohito. Other examples include the planners Joseph Ballantine, Hugh Borton, and Joseph Grew in May 1945, see Takemae, *Inside GHQ*, p. 215.

³¹⁰ *Ibid.*, p. 258.

³¹¹ *Ibid.*, p. 259.

³¹² Bix, *Hirohito and the Making of Modern Japan*, pp. 596-97.

³¹³ Dower, *Embracing Defeat*, p. 483. Dower contends the change occurred on advice from Tsuru Shigeto, a relation who had studied in the US and suggested the Americans would use a guilty plea as indication of Hirohito's guilt.

aimed to avoid the subject.³¹⁴ President Webb commented that this inferred Hirohito could have stopped the war on his own authority resulting in Chief Counsel Keenan getting Tōjō to retract his statement.³¹⁵ Had Hirohito been a co-defendant, this admission from Tōjō would have been a great boon to the prosecution case, yet the result of Hirohito's protection was the absurdity of a prosecutor effectively asking a defendant to retract potentially damning evidence.

These events connected to a wider issue that was at play in the selection process in terms of the availability of evidence had practical and political consequences for selection decisions. The prosecutors were faced with what Piccigallo noted as “rapid demobilization and repatriation of ex-POWs, witnesses and evidence scattered literally throughout the world, wholesale destruction of key documents by Japanese, incredible difficulties in identifying, locating and apprehending suspects in Japan proper and East Asia”, and these were only some of the problems.”³¹⁶ Further, the Japanese themselves were a key source of evidence as GHQ and the IPS encouraged Japanese help in preparing war criminal lists. Evidence was solicited from ‘liberal’ and leftist Japanese who often had been victims of the militarists themselves, and from officials who volunteered information (although as will be discussed this was not always an entirely altruistic act). Evidence was also gleaned what Arnold Brackman describes as “confidential informants who had opposed the war”, including senior government officials who arranged to turn over leads and information to IPS investigators.³¹⁷ One group of insider informants who were especially important were those connected to the Imperial Household who provided important and influential information and sources of evidence pertaining to potential war criminals. A key source of evidence of this type was the diaries of Marquis Kido, mentioned above, that became vital to the prosecutors. Kido relinquished his diaries dating during his interrogation and Brackman describes them as “an authoritative record giving names, dates and places for every important political development in contemporary Japanese history as viewed by the emperor's principal agent.”³¹⁸ While objectively, the diaries were of course a biased source and Kido's motives for handing

³¹⁴ *Northcroft Collection, Transcripts*, 36351.

³¹⁵ *Ibid.*, at 36779-81. The episode is related in Boister and Cryer, *The Tokyo IMT*, p. 67.

³¹⁶ P. Piccigallo, *The Japanese on Trial*, p. 13.

³¹⁷ A. Brackman, *The Other Nuremberg*, p. 58.

³¹⁸ *Ibid.*, p. 57.

them over related to shielding Hirohito, they were nevertheless one of the best sources the prosecution had for the machinations of Japanese government. Brackman pithily describes them as “the IMTFE’s Watergate tapes”³¹⁹ and they soon became one of the keystones of the prosecution’s case to the point where the prosecution saw them as an important cross-reference in analysing documents.³²⁰ Informants who co-operated did so in order to try to shape the prosecution to their own ends and to guide the prosecution towards and away from the prosecution of particular individuals and groups (such as protecting Hirohito).

There were however possible practical reasons for the exclusion of Hirohito from the indictment. While Hirohito was the head of state and ostensibly the head (or least a chief figure) in the conspiracy, the nature of the Japanese governmental system and constitution meant that in some respects his actual power was limited. Horwitz’s account argued that the EC had considering Hirohito from two perspectives in terms of his role in governmental machinery, and his personal role in supporting or objecting to the aggressive policies of his advisers. From both perspectives, the study deemed Hirohito as a figurehead.³²¹ Horwitz elaborates further on the prosecution argument during the trial in that the governmental system of Japan was based on two inconsistent ideas. First, all powers of government vested solely in the Emperor and all other government organs functioned as advisers to him. Second, the Emperor was a deity, and because of his divinity could not be held responsible. The solution to this paradox was that the advisers to the Emperor were responsible for their advice, not the Emperor personally.³²² If the Emperor acted in accordance with advice, the advisers were responsible, and to avoid responsibility that would be incompatible with his divine status, the Emperor was obliged to act in accordance with the advice of his advisers.³²³ Horwitz’s argument was that the prosecution considered the arguments for and against indictment and based on

³¹⁹ A. Brackman, *The Other Nuremberg*, p. 57.

³²⁰ ‘Memorandum from Mr Comyns-Carr, to the Executive Committee, Subject: Analysis of Documents (Up to 1507) (By Defendants)’, 7 May 1946, Box 10, Folder 1, Tavenner, MSS 78-3, Law Library, University of Virginia, accessed at <http://lib.law.virginia.edu/imtfe/content/item-1-analysis-documents-1507-defendants> (last accessed 9 April 2015). See also Executive Committee Meeting Minutes, 13 March 1946, Box 1, Folder 4, Morgan, MSS 93-4, Law Library, University of Virginia, accessed at <http://lib.law.virginia.edu/imtfe/content/item-9-minutes-fifth-meeting-executive-committee> (last accessed 9 April 2015).

³²¹ Horwitz, ‘The Tokyo Trial’, 497.

³²² *Ibid.*, at 505.

³²³ *Ibid.*, at 505-506.

their view of Hirohito's place and role in what had occurred they decided against indictment. This was reasonable given the place of the Emperor in the Meiji Constitution (discussed in the following chapter in more detail). Emperors had essentially supreme power but it was tempered by the exercise of that power under the guidance of ministers. Therefore, Hirohito was not a conspirator because he was not actually making decisions but rather following the advice of his ministers who were the actual conspirators. It is important to note Horwitz's account is from 1950 and thus post-IMTFE and perhaps he was attempting to answer critics of the decision not to indict Hirohito. Beyond that, the selection decisions were made after a clear decision against the indictment of Hirohito appears to have been made and communicated. It is possible that this account reflects how the prosecution sought to justify and reason why they 'chose' not to indict Hirohito on the basis that decision had already been made for them.

Conclusion

The defendant selection processes were a key aspect of the international criminal tribunals and intimately connected to the wider aims of the occupations. The question of who to indict was as much about Allied conceptualisations of their defeated regimes and the future societies they wanted to shape as it was about choosing who was likely to be guilty or not. In both Japan and Germany, there was explicit recognition that the defendants were on trial not simply for their personal culpability, but as symbolic representatives of the crimes and flaws of the pre-war regimes. In both cases, respective governments and authorities delegated selection decisions to the prosecutors themselves. The respective charters of the international charters delegated the power of selecting defendants to the prosecutors themselves, the Chief Counsel in consultation with Associate Counsel at Tokyo, and a committee of prosecutors at Nuremberg. Despite interventions such as the exclusion of Hirohito, the decisions made by the prosecutors were largely their own. However, these decisions were influenced by several practical and political factors meaning that defendant selection was never simply about the factual or legal merit of indicting a particular individual or organisation. The most important difference between defendant selection processes in Tokyo and Nuremberg was in how the prosecutors constructed their cases, and the model that they applied to the pre-war regimes. While US prosecutors in both cases utilised the conspiracy concept, how each

conspiracy worked and who was to blame differed. At Tokyo, the conspiracy was amorphous, loosely-organised and involved a range of different individuals at different points in time. "Who" was to blame was an ethos of militarism that resulted in aggressive war. The selection of defendants reflected involvement in this conspiracy was above all the connecting thread for all. However, at Nuremberg the conspiracy was focused upon organisations as the driving force, above all the *NSDAP* and its associated organisations. This reflected the differing nature of the German regime, but it also reflected the focus on organisational guilt suggested by Bernays, the originator of the conspiracy idea. Organisational guilt was also explicitly linked to occupation reforms, in that it was justified on the basis of aiding denazification efforts. An organisation found guilty meant that dealing with its members became practically easier, as membership became evidence of their guilt. Overall, the processes and results of defendant selection show that the tribunals did not operate in isolation from contemporary events in Japan and Germany. Defendant selection was inevitably shaped by how the Allied occupiers wished to reshape the defeated societies they governed, and how they understood (however poorly) the nature of the regimes that had gone before.

Chapter 4: The Political Reorientation of Japan and Germany

Introduction

The political reforms of the occupiers were not solely focused around the pursuit and punishment of identified individuals and groups for their purported culpability in the crimes of the defeated regimes. The occupiers' solutions to the political problems they saw in the states and societies they now occupied also included the encouragement and imposition of wide-ranging political reforms aimed at fulfilling the three major objectives of the occupations. The desire to change the nature of political life was a goal shared by moderate and harsh peace advocates, however the political reforms that moderate peace advocates desired were generally less drastic and interventionist than those desired by harsh peace advocates. Moderate rhetoric was often that of 'reorientation' or encouragement as opposed to intervention and imposition. Yet in their own way, moderate political reforms were radical interventions intended to wholly reshape the political lives of Japan and Germany. The full breadth of political reforms undertaken in Japan and Germany included electoral reform, the encouragement of new political parties, and repealing laws attacking civil liberties. It is impossible to adequately analyse all of these reforms here. Therefore two reforms in particular will be used as case studies. The demobilisation and dissolution of military institutions and constitutional revision provide valuable insights into key issues for moderate peace advocates, and were direct solutions to problems that the international criminal tribunals raised and discussed. While the deliberations of the tribunals may have post-dated specific reforms, they were in one sense part of the justification for these reforms. The tribunals in this respect were also implicitly concerned with framing the problems that needed to be solved by the occupiers. For example, through focusing attention on issues like how the militarists and *NSDAP* came to and maintained power, the prosecutors emphasised how the existing constitutions allowed and aided the conspirators rise to power.

The two case studies help to illustrate how the occupiers sought to make their major objectives a reality. Demobilisation and dissolution of military institutions involved the total (although not necessarily immediate) demobilisation of the armed forces, and the

dissolution of their formal institutions. With this reform, institutions that had long histories and strong institutional cultures simply ceased to exist by legal declaration. Moreover, the millions of Japanese and Germans still enlisted at the time of surrender returned to civilian life. The complete removal of the military from these societies was a powerful symbol of both the totality of defeat, and of the power of the occupier to enact reform. Arguably, these reforms connected logically with the attempts to criminalise and condemn aggressive war at the international tribunals by systematically dismantling the institutions that were the means of aggression. Another interesting case study concerns constitutional reform. In both Japan and Germany, constitutional reform was encouraged (although more directly in Japan) and this links in with a whole range of issues. In this context, the reform of the constitution around changing the institutional division of power and weighting it much more strongly towards the elected (and civilian) legislature was intended to ensure that it would not be possible for an institution or group like the military or the *NSDAP* to be able to take control of government and the state again. Power would now derive explicitly from the people and overly strong executive branches were weakened to ensure this became a reality. Constitutional reform was also important in its explicit anti-militarism; the new constitutions of Japan and Germany both included explicit articles renouncing aggressive war as an instrument of national policy.

In this discussion, it is important to remember that the desire to change the very nature of polity and society was not, and should not be, necessarily understood as total restructuring or imposing entirely new structures. Reforms were never simply imposed on an unwilling populace. This is because they often included elements of pre-existing domestic reform ideas, or some level of co-operation from political and social groups that had opposed or resisted the defeated regimes. They also often involved building on existing structures or could involve re-introduction of something that had existed in some form before. This is especially important given that the occupations were always temporary, and their ultimate goal was to return sovereignty to an acceptable government. Importantly, reforms that had little popularity or traction during the occupation risked being rolled back once sovereignty returned. Edwin O. Reischauer described this idea in his 1965 work, "In other words, we could forcefully tip the scales a bit, hoping that while we were doing so a new balance would be struck which would

maintain itself after our hand had been removed.”³²⁴ Political reorientation was therefore to some degree a collaborative effort between occupiers and occupied. The demobilisation and elimination of the Japanese and German militaries involved some level of co-operation with local authorities, and in the Japanese case, the Japanese themselves largely undertook the actual task willingly. Constitutional revision also involved some level of collaboration, as the occupiers did not wish simply to dictate new constitutions for fear they would not be lasting. The Japanese and Germans were encouraged to undertake constitutional revision themselves, and while under Allied supervision and intervention in the Japanese case, the resulting constitutions were ones that both met Allied objectives and were accepted by the people. SCAP’s phrase in their official reports on political reform of ‘political reorientation’ is therefore quite apt. The idea of reorientation encompasses both the dramatic and often radical nature of occupation reforms, but also the idea that reform could also be about switching societies onto another track rather than building from scratch. Despite the implications of concepts like ‘zero hour’ and ‘*Stunde null*’, neither Japan nor Germany provided a *tabula rasa* for the Allied occupiers and what occurred during the occupation was not a simple imposition of Allied ideals onto Japan and Germany.

Demobilisation and dissolution

Demilitarisation was a key part of Allied occupation reforms and despite the debate over the nature and extent of political and social reforms, and demilitarisation was present in almost every version of the occupation. In this context, demilitarisation refers to the demobilisation and dissolution of the armed forces, and the destruction of war industries to remove the war-making potential of Japan and Germany. In many respects, demilitarisation was the least problematic of the reforms undertaken by the Allied occupiers in both Japan and Germany in terms of compliance from the occupied. Carl Friedrich noted that among the core aims of the American occupation in Germany (the ‘four D’s’), demilitarisation underwent the least modification.³²⁵ For the populations of Japan and Germany, the rapid demobilisation of their militaries while foreign armies

³²⁴ Edwin O. Reischauer, *The United States and Japan*, (Cambridge, Harvard University Press, 1965), p. 286.

³²⁵ Carl J. Friedrich, ‘The Peace Settlement with Germany – Political and Military’ *Annals of the American Academy of Political and Social Science* 257 (1948) 119-128, at 119.

occupied their territories was perhaps the most obvious and unavoidable sign of their defeat. In both states (and like all major combatant powers), the majority of the military was conscripted from the population. Japan's *Military Service Law* of 1927 and the *Military Service Law (Wehrgesetz)* of 21 May 1935 established universal conscription in each country meaning that their militaries were conscripted citizenry rather than the volunteer militaries common in the modern world. However, unlike the Western Allies (though not the Soviet Union), the conscripted militaries were also an important form of coercion by the defeated regimes.

Japan

The two major aspects of demilitarisation in Japan were the demobilisation and dissolution of the Imperial armed forces, and the removal of Japanese war *matériel* and industries. These were set out in the Potsdam Declaration, whose terms included that "the Japanese forces, after being completely disarmed, shall be permitted to return to their homes"³²⁶ and that Japan would not be permitted to retain industries "which would enable her to re-arm for war."³²⁷ *SWNCC 150/4/A* set out as one of the ultimate objectives that "Japan will be completely disarmed and demilitarized."³²⁸ Further, the policy stated, "disarmament and demilitarization are the primary tasks of the military occupation and shall be carried out promptly, and with determination...Japan is not to have an army, navy, airforce, secret police organization, or any civil aviation. Japan's ground, air and naval forces shall be disarmed and disbanded."³²⁹ As for Japan's economic military strength, "the existing economic basis of Japanese military strength must be destroyed and not be permitted to revive."³³⁰

The process of demilitarisation in terms of demobilisation of the armed forces was among the first of SCAP's concerns, and proceeded remarkably quickly given the numbers involved and the geographic dispersal of Imperial military personnel at the surrender. MacArthur's official reports state that the Imperial Japanese Forces totalled 6,983,000

³²⁶ *Potsdam Declaration*, Article 9.

³²⁷ *Ibid.*, Article 11.

³²⁸ *SWNCC 150/4/A*, Part I – Ultimate Objectives.

³²⁹ *Ibid.*, Part III – Political.

³³⁰ *Ibid.*, Part IV – Economic.

troops on the day of surrender³³¹, and Dower notes that across Asia and the Pacific there were around three-and-a-half million deployed.³³² An issue of immediate concern to the Allies at this point was that unlike Germany at its surrender, Japanese territory had not been occupied and large formations and numbers of troops still existed. MacArthur noted that the forces in the Home Islands comprised some “fifty-nine Japanese divisions, thirty-six brigades, and forty-five-odd regiments plus naval and air forces.”³³³ Despite this sizeable force still under arms, by the end of 1945 all military forces in Japan proper had been demobilized, and the process of repatriating and demobilising military personnel overseas was well under way (with the exception of the areas under Soviet administration). Even more remarkably this process was largely conducted by the Japanese government themselves rather than by SCAP. As Takemae notes, while SCAP supervised and coordinated demobilisation and repatriation plans, the Japanese government drafted and executed these plans.³³⁴

SCAP issued its first official directive concerning demilitarisation alongside the Instrument of Surrender itself on 2 September 1945. *Directive Number 1, 2 September 1945* and the attached *General Order No. 1, Military and Naval* included provisions that all Japanese commanders in Japan and abroad were to “disarm completely” the forces under their command, and “to deliver intact and in safe and good condition all weapons and equipment.”³³⁵ Imperial General Headquarters had immediate responsibility for the demobilisation process, however after its dissolution on 13 September 1945, the War and Navy Ministries took over this role.³³⁶ The process proceeded rapidly from this point and discussions between Japanese representatives and SCAP officials set out the date for completion of demobilisation on the Home Islands as 15 October 1945.³³⁷ At the beginning of October, SCAP approved a Japanese plan to convert the ministries into the

³³¹ *Reports of General MacArthur – MacArthur in Japan: The Occupation: The Military Phase Volume 1 Supplement*, (Facsimile Reprint, 1994)

<http://www.history.army.mil/books/wwii/MacArthur%20Reports/MacArthur%20V1%20Sup/Index.htm#cont> (last accessed 9 April 2015), p. 116.

³³² Dower, *Embracing Defeat*, p. 48

³³³ *Reports of General MacArthur*, p. 117.

³³⁴ Takemae, *Inside GHQ*, p.108.

³³⁵ *General Order No.1, Military and Naval*, attached to *Directive Number 1*, Office of the Supreme Commander for the Allied Powers, , 2 September 1945.

³³⁶ SCAPIN 25, 13 September 1945.

³³⁷ *Final Report: Progress of Demobilization of the Japanese Armed Forces, 31 December 1946*, General Headquarters, Supreme Commander for the Allied Forces, Military Intelligence Section, General Staff, pp.1-2.

First and Second Demobilisation Ministries, staffed and organised in the same manner as other civil ministries by 30 November 1945. As demobilisation continued, these Ministries gradually reduced in size.³³⁸ By the target date of 15 October, 83 percent of the original strength of the army had been demobilised, and the remainder were in the process of doing so with all military units in Japan demobilised by December.³³⁹ The demobilisation of overseas forces was more complicated, however procedures using the former Navy to help repatriate and demobilise overseas forces and civilians was set up at the same time. This process was comparatively rapid in all areas apart from those under Soviet administration³⁴⁰, and apart from the increased time necessary for transport, executed with similar ease to demobilisation of home-based forces.³⁴¹

Demobilisation occurred so quickly and completely that MacArthur was able to claim in a 15 October 1945 radio address to the American people,

I know of no demobilization in history, either in war or in peace, by our own or by any other country, that has been accomplished so rapidly or so frictionlessly...In the accomplishment of the extraordinarily difficult and dangerous surrender of Japan, unique in the annals of history, not a shot was necessary, not even a drop of Allied blood was shed. The vindication of the great decision of Potsdam is complete.³⁴²

The rapid demobilisation of the Japanese military was a remarkable feat, and meant that any serious armed threat to the occupation was quickly minimised. Demobilisation was a key step in the Occupation, as it also meant the abolition of the institutions which had dominated Japanese politics and society since the early 1930s, and which had exerted influence over civilian and democratic government since the Restoration. However, demobilisation was only the first step in the political and social reorientation that was to take place.

³³⁸ *Reports of General MacArthur*, p.119.

³³⁹ *Ibid.*, p.122-9.

³⁴⁰ The Soviets captured roughly 1.7 million Japanese soldiers, and as many as 700,000 were shipped to labour camps to assist reconstruction. A majority of internees were eventually sent home but this took until the mid-1950s and between 300 and 500,000 never returned. [Takemae, *Inside GHQ*, p.111]

³⁴¹ *Reports of General MacArthur*, p.123.

³⁴² *Ibid.*, p.131.

Germany

The process of German demobilisation in general terms was similar to that which occurred in Japan as it involved the complete demobilisation of personnel and the dissolution and abolition of the military organisations, and their administrative bureaucracies. However, this process was comparatively much more drawn out and complicated by the fact that German personnel were held not only by four different occupying powers in Germany itself, but also by other states outside of Germany. This meant that while there was ostensibly a general Allied policy toward demobilisation, its implementation differed. German demobilisation also differed in that the occupiers explicitly and specifically targeted 'social' aspects of the military, or associated with the military. This was much less apparent in the Japanese context. In many respects, the problem of demobilisation for the Allies in Germany was much greater than in Japan. While substantial German forces were still deployed in Scandinavia, and pockets of resistance remained throughout Europe, the German military had been largely defeated and Germany itself occupied. While this meant the Allies did not face a large undefeated force in possession of the surrendering state, they did have to deal with massive numbers of German personnel. James M. Diehl notes that at the time of German capitulation, over eleven million personnel were in Allied custody, and some eight million of these held by the Western Allies (the vast majority of these by the US).³⁴³ This helped to create what Diehl calls a "logistical nightmare"³⁴⁴ where the occupying powers not only had to deal with "setting up military governments to rule the war-ravaged country, had to feed, house, and clothe the vast army of prisoners under their control."³⁴⁵

The Allied Control Council (ACC) began the official demobilisation process in the middle of 1945. These instruments covered both the formal process of demobilisation, the dissolution of the military organs and other organisations, and restrictions around related aspects of the military imposed. The key instrument was ACC *Proclamation No.2*, which set out the basic scheme of the demobilisation process. Section 1 stated

³⁴³ James M. Diehl, *The Thanks of the Fatherland: German Veterans After the Second World War*, (Chapel Hill, University of North Carolina Press, 1993), p. 65. The disparity was largely due to deliberate *Wehrmacht* efforts to surrender to the Western Allies rather than the Soviets.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

All German land, naval and air forces, the S.S, the S.D. and Gestapo with all their organisations, staffs and institutions , including the General Staff, Officers' Corps, Reserve Corps, military schools, war veterans' organizations, and all other military and quasi-military organizations, together with all the clubs and associations which serve to keep alive the military tradition in Germany, shall be completely and finally abolished in accordance with methods and procedures to be laid down by the Allied representatives.³⁴⁶

Proclamation No.2 was a clear statement of how the Allied powers intended to proceed in respect to Germany in regards to the military, and other ACC instruments essentially gave effect to this requirement in more specific terms, in both disbanding the armed forces and dissolving the organisations themselves.

The ACC issued *Directive No.18* on 12 November 1945 concerning the dissolution and disbandment of the armed forces. This directive ordered that members of the German armed forces were to be demobilised within particular limitations.³⁴⁷ These limitations were based on considerations of the demands of Allied nations for German labour, that 'war criminals, suspected war criminals, and security suspects' were to be detained, and finally the necessity for detaining 'potentially dangerous' officers of the *Wehrmacht* and para-military organisations.³⁴⁸ Apart from these limitations, disbandment of German personnel was to be "methodically organised and controlled," with a formal discharge procedure set out.³⁴⁹ However, not all German personnel were held within Germany and significant numbers were prisoners of war throughout Europe. The directive stated that these were "*eventually* to be returned to the Zone occupied by the Power who is detaining them" ³⁵⁰ and once there, to be demobilised as per the directive's procedure. ³⁵¹ Importantly, this created large delays in the total demobilisation of the former German armed forces as large numbers of POWs remained in custody for months and years after personnel in Germany had been demobilised. This meant that practically, the process of demobilisation took much longer than that of Japan, as even making consideration for the

³⁴⁶ *Control Council Proclamation No.2*, 'Agreement Between the Governments of the United Kingdom, The United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic of Certain Additional Requirements to be imposed on Germany' 20 September 1945

³⁴⁷ *Allied Control Council Directive No. 18*, 'For Disbandment and Dissolution of the German Armed Forces', 12 November 1945.

³⁴⁸ *Ibid*, (1)

³⁴⁹ *Ibid*, (2)

³⁵⁰ Those held by other states were to be transferred to the territory of an appropriate occupying power.

³⁵¹ *Ibid*, (6)

similar treatment of POWs by the Soviet Union, large numbers of prisoners remained in custody for longer.

Control Council Law No.34, 'Dissolution of the Wehrmacht' was the final major official instrument concerning demobilisation and promulgated on 20 August 1946. The law declared

The German war ministries...all German land, naval and air forces, with all their organisations, staffs, and institutions...and all other military and quasi-military organisations, together with all the clubs and associations which serve to keep alive the military tradition in Germany, are hereby considered disbanded, completely dissolved, and declared illegal.³⁵²

Further, all remaining property held by these organisations was to be subject to confiscation by order of the Zone commander.³⁵³ This law marked the formal end to the German armed forces, and even if their members were still in the process of being demobilised or remained in Allied custody, the organisations to which they had belonged ceased to be. Prima facie by September 1946, Germany was formally demilitarised in the sense that military personnel were being demobilised, and that the formal structures of the military had been dissolved. While significant numbers of German personnel remained in Allied custody, and some would do so for over ten years, the formal structures and institutions of the armed forces ended and Germany ceased to have a military. However, the idea of demilitarisation was not simply concerned with demobilising and abolishing the military. What might be termed 'social' demilitarisation was also an important part of the reforms enacted by the Allied occupying powers.

Constitutional revision

Introduction

Constitutional revision was an important part of political reorientation efforts in the occupied states. Constitutional revision was important in shaping the new states that the occupiers desired to shape, and a method of showing the Japanese and Germans how

³⁵² *Allied Control Council Law No.34*, 'Dissolution of the Wehrmacht', 20 August 1946.

³⁵³ *Ibid*, Article IV.

fundamentally different the new states would be. To some extent, the phrase 'revision' masks the revolutionary nature of the new constitutions that fundamentally redefined the relationships between the state and people, the sources of power within the state, and the power relationships between different state organs. The legal theorist Hans Kelsen defined constitution in a material sense as "the positive norm[s]...which regulate the creation of general legal norms."³⁵⁴ Constitutions are the law by which all other law is created, and with which all persons (legal or natural) must comply. They set out the formal rules on the government and state and where rights and responsibilities lie between state organs, and between state and society. In both Japan and Germany, as the rules by which government and state formally operated were incompatible with the desires of the occupiers, constitutional revision was essential. In political terms, constitutions set out the power structures and relationships of the state. They set out how and where ultimate power is derived and how power is distributed. They give formal definition to what powers can and can not be exercised by a particular state organ and the power hierarchies between state organs. Constitutions set out what Kelsen described as "norms concerning other politically important subjects."³⁵⁵ Constitutions are used to give public and formal expression to important ideals that underpin the political system. Perhaps the most important thing about constitutional revision in Japan and Germany was that it occurred during the occupations. That is, constitutional revision was undertaken when Japan and Germany did not have sovereign domestic government, and were governed by occupational authorities. The occupiers saw constitutional revision as an important task and its successful completion as an important step in fulfilling their overall political objectives. The Allied occupiers took both a direct and indirect role in constitutional revision in both Japan and Germany. Even where parts of the process were essentially left to the Japanese and Germans, these were undertaken in a milieu of Allied overlordship and under implicit knowledge that if the resulting constitutions were fundamentally unacceptable, they would be rejected. The relationship between the occupier and occupied in regards to constitutional revision was an awkward partnership where the occupiers had the ability to enforce their will on the occupied, but strongly preferred to avoid doing so and this was something that both parties were well aware of.

³⁵⁴ H. Kelsen, *The Pure Theory of Law* (translated from the 2nd German Edition, M. Knight), (Berkeley, University of California Press, 1967), p. 222.

³⁵⁵ Ibid.

The multi-layered roles of constitutions are aptly summarised by Donald Fellman, who argued

A constitution is more than a mere document....[and] more than a mere law. It imposes restraints upon government...legitimiz[ing] its power. It is a record of national experience, and a symbol of the nation's aspirations. It serves the important function of articulating the ideals of the community, of stating its social and economic aims. It exerts a tremendous educational influence as a convenient, easily-read compendium of the nation's basic purposes and principles.³⁵⁶

Both the former and new constitutions of Japan and Germany fulfilled this role and as a whole clearly expressed how the drafters understood their society, and how they wished it to be. The Meiji Constitution of 1889 was carefully constructed to provide an expression of the absolute power of the Throne after the Meiji Restoration of 1868, but also to ensure that the drafters (the oligarchs) retained actual power. The people were described only as 'subjects', and their power and rights subject to those of the state. The 1947 constitution flipped this power structure on its head, making clear that power derived from the people, that the most powerful institution of state was a popularly elected legislature, and that fundamental rights were protected. Germany was more complicated, given that there was no constitution in force after surrender. Whatever constitution that regime might have had would have inherently reflected the totalitarian nature of Nazism, and the Weimar constitution had fundamental flaws. German constitutional experience was complex, with several models at play, but all of them reflected a particular conception of Germany. The Basic Law (*Grundgesetz*) was no different, and like the 1947 Constitution, it made clear the absolute supremacy of the people as the source of power, and imposed strict protections from the growth and abuse of state power.

Constitutional revision is explored here in three contexts: the reshaping of state structures, the reshaping of the relationship between state and people concerning sovereignty and rights, and the specific provisions aimed against militarism and the military. Constitutional revision in these contexts provides useful case studies of solving problems raised by the prosecutors during the international tribunals; namely the failure

³⁵⁶ D. Fellman, 'Constitutionalism' in *Dictionary of the History of Ideas, Volume I*, (New York, Charles Scribner's Sons, 1973), p. 491.

of 'civilian' government, the victimisation of the people by the state, and the problems of military influence on the state. These were themes running throughout the prosecution arguments at both Tokyo and Nuremberg, but also themes running through Allied reform ideas and actions as well.

The Japanese constitutions

Possibly the most important reform imposed during the occupation of Japan was the new Japanese constitution, drafted in 1946, and coming into force in 1947.³⁵⁷ It replaced the previous Meiji Constitution of 1889, and was (and remains) a remarkable document. The 1947 Constitution fundamentally reshaped the nature of the Japanese state, its relationship to the Japanese people, and included a clause whereby Japan renounced war and armed forces, and became a fundamentally pacifist nation. However, the 1947 Constitution was primarily drafted not by the Japanese themselves, but drafted for them by American officials within SCAP in February 1946. This was in response to the perceived failure of the Japanese government to comply fully with SCAP requirements with their own reform proposal. However, the 1947 Constitution was not solely an American document, as it underwent important amendments as it passed through the Diet. Constitutional reform was also the subject of discussion between the Japanese themselves, with constitutional proposals from different political and social groups emerging from 1945.

The Meiji Constitution was Japan's first written and modern constitution, and emerged during the reign of the Meiji Emperor (1867-1912) that saw Japan transformed from an isolated pre-modern society to an emerging modern industrial power through sweeping political, social, and economic change. The Meiji Constitution arose as a conservative response from the oligarchs to internal government debate, popular movements for representative government and political crises in the 1870s and early 1880s.³⁵⁸ The 'Popular Rights Movement' emerged around 1873 led by a faction of former oligarchs who organised a peaceful campaign for an elected national assembly. This grew into a diverse

³⁵⁷ The constitutions are referred to here as the 'Meiji Constitution' and the '1947 Constitution'.

³⁵⁸ 'Oligarchs' is used here to refer to the new ruling class that helped precipitate the Meiji Restoration in 1867-8, and who dominated political and government affairs.

coalition based around a variety of other political and social goals. In 1879 and 1880, the movement organised a mass petition campaign to demand the drafting of a national constitution, and while the movement was largely peaceful at this stage, the oligarchs and military leaders acted to defuse the movement by granting a constitution.³⁵⁹ The constitution was prepared over several years from late 1881 to 1888, and was finally promulgated by the Emperor on 11 February 1889. The Meiji Constitution made explicitly clear that the source of all political power and legal authority was the Emperor. Especially important was Article IV, which stated that all rights of sovereignty were placed in his person, and exercised by him.³⁶⁰ Further, broad executive powers were placed in the Emperor, including giving sanction to all laws, the command and organisation of the military, the right to declare war and make treaties. Importantly, while the Emperor was said to exercise the legislative power “with the consent of the Imperial Diet”³⁶¹, his consent was also required for the promulgation and execution of laws,³⁶² meaning the executive had an effective veto power over the Diet. The Emperor also had the right to grant Imperial Ordinances in place of laws, with the only limitation that these not alter any existing law.³⁶³ The Emperor and government were also granted financial independence from the Diet, removing an implicit control of the threat of withholding or removing funding. Article LXIV stated, “the expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual budget.”³⁶⁴ However, Article LXXI stated if the Diet failed to pass a budget, the previous year’s budget remained operational.

Importantly, the government was also set apart and above the Imperial Diet. Ministers of State were to give their advice to the Emperor and be responsible to him, not the Diet.³⁶⁵ Coupled with the Emperor’s right to determine the organization of the administration, and appoint/dismiss its officials in Article X, this meant that the executive controlled itself and there was no formal responsibility to any other branch of government. However, this

³⁵⁹ For more information, see Stephen Vlastos, ‘Opposition movements in early Meiji, 1868-1885’ in *The Cambridge History of Japan, Volume 5: The Nineteenth Century*, (Cambridge, Cambridge University Press, 1989) 367-431, at pp. 403-13.

³⁶⁰ Constitution of the Empire of Japan [Meiji Constitution], Article IV, from *Political Reorientation of Japan, September 1945 to September 1948 [PRJ] Volume II*, (Grosse Pointe, Scholarly Press, 1968, reprint of 1949 original) Appendix C:1, p. 586.

³⁶¹ *Ibid.*, Article V.

³⁶² *Ibid.*, Article VI.

³⁶³ *Ibid.*, Articles VIII and IX.

³⁶⁴ *Ibid.*, Article LXIV.

³⁶⁵ *Ibid.*, Article LV.

constitutional absolutism was coupled with important traditional political principles around the Emperor's spiritual and religious status, to create government that was de facto run by the oligarchs. Kazuo Kawai notes that "there has hardly been a time in all of Japan's history when the emperor actually ruled; he ha[d] simply been the fountainhead of authority."³⁶⁶ This was a result of the Emperor's spiritual role and the sense in which he was a "transcendental institution of state power."³⁶⁷ This meant that in order that the Emperor not contradict his sacred role, it had long been political convention that the Emperor's advisers acted in his name, and that he should not act unless on their advice.³⁶⁸ The Meiji Constitution formalised this by setting out the sovereignty of the Emperor and his broad executive powers, but also that of the ministers through which he ruled. The result was, as David Anson Titus argues, "the oligarchs apparently hoped to ensure their own power to develop Japanese political institutions around a core of bureaucratic initiative supported by prerogative above and loyalty below."³⁶⁹ The political and social rights of the people set out by the Meiji Constitution were problematic from the perspective of liberal democracy. *Prima facie*, in Chapter II 'Rights and Duties of Subjects', the document gives a whole range of political and social protections to the Japanese people. However, these were couched in illiberal terminology, whereby the people were described simply as 'subjects'. The phrasing made clear that these rights more like gracious grants from the Emperor. Further, many of the articles enshrining rights included phrases like "within the limits of law."³⁷⁰ This meant that these rights were not higher law; rather they could simply be restricted or abrogated by normal legal procedure, and thus any protection they provided existed only as far as the government wished.

Overall, the Meiji Constitution created structures and a system that was similar to that of other European states, and appeared to include concepts of separation of powers and the rule of law. However, the reality was that the Meiji Constitution created what Takemae describes as "monarchical quasi-absolutism...[where] real political authority was wielded

³⁶⁶ Kazuo Kawai, 'Sovereignty and Democracy in the Japanese Constitution', *American Political Science Review* 49 (1955) 663-672, at 663-664.

³⁶⁷ David Anson Titus, *Palace and Politics in Prewar Japan*, (New York, Columbia University Press, 1974), p. 47.

³⁶⁸ Kawai, 'Sovereignty and Democracy', 664.

³⁶⁹ Titus, *Palace and Politics*, p. 47.

³⁷⁰ Example—Article XXIX "Japanese subjects shall, **within the limits of law**, enjoy the liberty of speech, writing, publication, public meetings and associations."

by a tiny cabal close to the Throne.”³⁷¹ The centralisation of power in a sovereign executive coupled with traditional political principles whereby the emperor reigned but did not rule meant that the Meiji Constitution really created government of the oligarchs, by the oligarchs and for the oligarchs. Important political and state decisions were not made in the Imperial Diet, but within a limited group of advisers including the oligarchs, the Privy Council, Imperial family members and Court officials, and senior officers of the military. The system that the oligarchs set in place in 1890 initially functioned well over the remaining years of the Meiji period, however increasing pressures for democratisation and the ageing and death of the oligarchs meant that Japanese politics began to open up in the Taishō period (1912-25). The power of the Imperial Diet grew and party political governments became the norm and increasingly took more of a role in government and politics during this period in Japan, although the constitutional structure remained unchanged. As a result when militarist officers and officials imposed their control on the executive, they were able to pull the strings of the entire governmental system by filling the gap where the oligarchs had acted. The fundamental flaws of the Meiji Constitution in allowing the militarists and their allies to take and maintain control of the state was one of the key motivations in Allied desires to revise it.

The 1947 Constitution: initial attempts at revision

The revision of the Meiji Constitution quickly became a cornerstone of the political reforms enacted during the Occupation, as it was clear that the Meiji Constitution had provided no effective defence against the militarists. The militarists gained and maintained their power essentially constitutionally, and unlike the *NSDAP* in Germany, they had not overturned the existing constitution and replaced it. John Maki argued “In a very real sense, both militarism and authoritarianism in Japan were constitutional because no provisions of the 1889 Constitution were suspended or violated.”³⁷² Rather, government continued as it had before and the militarists exploited their independence from civilian authority and the power of the executive to rise to and maintain power. The Meiji Constitution had done nothing to stop the militarists from dominating Japan, and this was something both the Allied occupiers and Japanese political elites understood.

³⁷¹ Takemae, *Inside GHQ*, p. 271.

³⁷² John H. Maki, ‘The Japanese Constitutional Style’ in *The Constitution of Japan—Its First Twenty Years 1947-67*, ed. Dan Fenno Henderson, (Seattle, University of Washington Press, 1968) pp. 3-39, p. 7.

However, how they differed was where the solution to that problem lay. The post-surrender Japanese government largely saw the solution as amending the Meiji Constitution to fix these problems. However, the Allied occupiers saw much greater reform of the constitution as necessary to fulfil their desired objectives. While SCAP preferred to have the Japanese government revise the constitution to avoid the perception that it was a foreign imposition, when it became clear that the Japanese government refused to revise the constitution to the degree it was felt was needed, SCAP stepped in.

The key policy concerning constitutional reform was issued by the SWNCC on 27 November 1945. *SWNCC 228—Reform of the Japanese Governmental System* concluded that the Supreme Commander should indicate to the Japanese government that its governmental system should be reformed to accomplish seven general objectives. Among these were “a government responsible to an electorate based upon wide representative suffrage”, “an executive branch of government deriving its authority from and responsible to the electorate or to a fully representative legislative body”, “a legislative body, fully representative of the electorate...”, and a “guarantee of fundamental civil rights to Japanese subjects.”³⁷³ Concerning the Emperor and Imperial institution, SWNCC 228 stated, “the retention of the Emperor institution in its present form is not considered consistent with the foregoing general objectives.”³⁷⁴ However, there were two provisos in SWNCC 228. First, it was specifically stated that “only as a last resort” should SCAP order the Japanese government to make reforms. This was on the understanding that “the knowledge that they had been imposed by the Allies would materially reduce the possibility of their acceptance and support by the Japanese people for the future.”³⁷⁵ It was also desired that any reforms of the governmental system be lasting ones, in that they would remain in place when occupation control had been withdrawn. It is clear that the committee understood the importance of fostering internal acceptance of reforms to ensure their survival. SWNCC 228 stated effective reform and prevention of a resurgence of militarism depended “in a large measure upon the acceptance by the Japanese people of the entire program.”³⁷⁶

³⁷³ *SWNCC 228—REFORM OF THE JAPANESE GOVERNMENTAL SYSTEM*, 27 November 1945 [4. a. (1),(2), (3) and (5)]

³⁷⁴ *Ibid.*, [4. (7). b. and d.]

³⁷⁵ *Ibid.*, [5]

³⁷⁶ *Ibid.*, [6].

Based on these directives, SCAP's approach was to inform the Japanese government both publicly and privately that they should undertake constitutional reform, with the desire that they fulfill the aims outlined in SWNCC 228. In early September 1945, the Higashikuni government was informed that "the development of a free and responsible government was a prime requisite of occupation control."³⁷⁷ This was further emphasised on 11 October 1945, when MacArthur directly informed Prime Minister Shidehara "necessary governmental reforms...would necessitate a general constitutional revision."³⁷⁸

The Matsumoto Committee (Constitutional Problem Investigation Committee) under Matsumoto Jōji, was established 25 October 1945 as an official revision initiative. Matsumoto was in fact a commercial, rather than a constitutional, law expert and the very name of the Committee implied that its creators were ambivalent at best about reforming the Meiji Constitution. The constitutional scholar Tatsukichi Minobe argued (in line with his pre-war theories) that the constitution was quite flexible, and that amending supplementary laws would be preferable. Shidehara suggested that the Meiji document was not undemocratic and required only a few amendments of phrasing. Matsumoto himself denied any need to change the articles concerning the Emperor or his divinity.³⁷⁹ The Matsumoto Committee continued its work into 1946, and although its deliberations were not made public, it is likely that some form of draft emerged by January.³⁸⁰ The Committee operated with no apparent formal instructions or guidance for its work.³⁸¹ Dower contends that their only reference for revision seemed to be the Meiji Constitution itself, and they made no consideration of other constitutional drafts being formulated by other political and civil groups.³⁸² The Matsumoto proposals essentially left the Emperor's position intact, with the only real changes of a procedural kind. No real changes were made to political and civil rights, and mostly minor changes were made to the powers of the Diet. Cabinet remained without collective responsibility to the Diet, and remained without defined jurisdiction, nor was the appointment of Prime Minister set

³⁷⁷ Supreme Commander for the Allied Powers. General Headquarters. Statistics and Reports Section, *History of the Non-Military Activities of the Occupation 1945-51 [HNMAO]* (Tokyo, SCAP, 1952) Monograph 8 - Constitutional Revision, 1945-December 1951. v.3 pt.B, 1952. 88, pp.10-11. [MP 65-4 Roll No.2, Monographs 7-10, Library of the University of Wisconsin, Madison] p. 30

³⁷⁸ Ibid.

³⁷⁹ *HNMAO* 8, p. 31.

³⁸⁰ *PRJ*, vol I., p. 98.

³⁸¹ Ibid.

³⁸² Dower, *Embracing Defeat*, p. 353.

out. In terms of the military, it was proposed to simply replace 'army' and 'navy' with 'armed forces'.³⁸³ Dower argues that the Committee refused to consult with SCAP or consider the views of those experts who had studied US constitutional law.³⁸⁴

Importantly, the official constitutional revision initiatives were not the only initiatives and an array of political and civil society groups drafted and publicised constitutional revision initiatives. While many of them were simply starting points rather than detailed drafts, Takemae notes that these were given "extensive coverage in the mass media, reflecting a new popular commitment to change."³⁸⁵ Not only was there popular commitment to change, but most of these proposals went further than the official initiatives in their proposals for constitutional amendment. One example was the Progressive Party's proposal³⁸⁶ (the most conservative of the party proposals) which still made clear the supremacy of the Lower House of the Diet over the Upper, gave clear guidelines for the appointment of the Prime Minister, and set out his and Cabinet's responsibility to the Diet. While there were no guarantees of individual rights, there was the proposal for judicial independence and the power of judicial review.³⁸⁷ Beyond the political parties, civil society groups also published constitutional proposals. The proposal of the *Kenpō Kenkyūkai* was especially interesting. It was headed by Dr Takano Iwasaburō (labour leader and academic), and the young constitutional scholar Suzuki Yasuzō. Takano had previously advocated for the elimination of the Imperial institution and strong human rights guarantees. Suzuki had studied the proposed constitutions from the Popular Rights Movement of the 1870s. The group also studied various national constitutions, and their proposals, while retaining the Emperor, stripped him of all powers and made Cabinet the highest organ of executive power. This particular proposal was important as it was the subject of an extensive analysis by GS, and the memorandum prepared praised its "outstanding liberal provisions" and that "the provisions included in the proposed

³⁸³ Dower, *Embracing Defeat*, pp. 99-101.

³⁸⁴ *Ibid.*, p. 352.

³⁸⁵ Takemae, *Inside GHQ*, p. 273.

³⁸⁶ This is the name given in *PRJ* Vol. I—the proper name of the party was the Japan Progressive Party, founded by former members of the majority faction within the IRAA in 1945. Information about the parties is from the National Diet Library at <http://www.ndl.go.jp/modern/e/cha5/description04.html> (last accessed 9 April 2015).

³⁸⁷ Hussey, 'The New Constitution' *PRJ*, vol. I, p. 96.

constitution are democratic and acceptable.”³⁸⁸ Koseki suggests that the fact that GS Chief Courtney Whitney signed the memorandum meant both that Whitney and GS took the draft seriously, and that Rowell’s comments reflected GS’s views.³⁸⁹ These constitutional proposals are important because they differ from the official initiatives, and help to show that the Japanese people as a whole did not share the reluctance of the Japanese government to make real changes to the Meiji constitution.

Up to this point, SCAP had scrupulously avoided even the perception of interfering in the process. Takemae suggests that this reluctance may have had legal cause, as the 1907 Hague Conventions stated that an occupying power was bound to respect the laws in force in the occupied territory.³⁹⁰ The 1941 Atlantic Charter proclaimed the fundamental right of self-determination. On this basis, any attempt by SCAP to unilaterally act might have left them open to potential breaches of international law.³⁹¹ Beyond these concerns, it was also clear that SCAP and the United States wished to avoid perceptions of any revised constitution as an ‘American’ document. In a meeting with FEAC delegates on 30 January 1946, MacArthur made clear that he had issued no orders or directives concerning the constitution, and limited himself only to ‘suggestions’.³⁹² Furthermore, it was “his hope that whatever might be done about constitutional reform in Japan, that this would be done in such a way as to permit the Japanese to look upon the resulting document as a Japanese product.”³⁹³ MacArthur was convinced any imposed constitution imposed would mean “[the Japanese] would get rid of that constitution...merely for the purpose of asserting and maintaining their independence of ideas that they had been forced to accept.”³⁹⁴ Despite his hyperbole, MacArthur’s statements give a clear indication that SCAP realised the importance of some level of Japanese acceptance for the constitutional revisions.

³⁸⁸ ‘Memorandum by Lt. Col. Rowell, 11 Jan 1946’, cited in Koseki Shōichi, *The Birth of Japan’s Postwar Constitution*, trans. R.A. Moore, (Boulder, Westview Press, 1997), p. 70.

³⁸⁹ Koseki, *The Birth of Japan’s Postwar Constitution*, p. 70.

³⁹⁰ *Hague Conventions IV: Laws and Customs of War on Land, October 18, 1907*, Article 43.

³⁹¹ Takemae, *Inside GHQ*, p. 272.

³⁹² ‘Memorandum by the Secretary of the Far Eastern Advisory Commission (Johnson), January 30, 1946’ in *FRUS (1946) Vol. VIII—The Far East* (Washington DC, US Government Printing Office, 1946) pp. 123-127, at p. 124.

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*, p. 125.

SCAP's intervention

By February 1946, SCAP's unwillingness to intervene in the revision process was overcome resulting in SCAP producing a model constitution. This policy shift was a direct result of the apparent failure of the Japanese to produce an acceptable constitution, but also of the threat of FEC intervention. The SCAP draft was completed in absolute secrecy and without interference in a mere seven days. Eight sub-committees used the more acceptable Japanese proposals and studies of other national constitutions and produced a model constitution with 92 articles. The chief architects were the GS staff Charles Kades, Alfred R. Hussey and Rowell, "all highly experienced lawyers...[striving] to produce a model document that would set a new world standard of government."³⁹⁵ The document was presented to the Japanese government on 13 February 1946, formally endorsed by the government on 5 March, and made public the next day. While the process of formally adopting this constitution took the rest of 1946, and the Japanese in the process made important amendments and changes, the 103-article document promulgated by Hirohito through Imperial Rescript on 3 November 1946 and coming into force on 3 May 1947 retained the spirit of the SCAP draft. Pressure from the FEC likely influenced SCAP's decision to intervene. The Filipino FEAC representative Tomas Confesor stated in a meeting with GS on 17 January that he did not understand "why constitutional revision is not part of your work."³⁹⁶ This comment can be read as criticism of SCAP for not proceeding more quickly on the constitution issue, and similar comments were raised in the 29 January meeting with MacArthur. Also important at this time was the impending establishment of the FEC, established by the *Moscow Agreement* of 27 December 1945. Two particularly important aspects of the mandate of the FEC were the ability to "formulate the policies, principles, and standards in conformity with which the fulfilment by Japan of its obligations under the Terms of Surrender may be accomplished", and "To review, on the request of any member, any directive issued by the Supreme Commander for the Allied Powers or any action taken by the Supreme Commander involving policy decisions within the jurisdiction of the Commission."³⁹⁷ However, given that the FEAC was

³⁹⁵ Takemae, *Inside GHQ*, p. 277.

³⁹⁶ Charles L. Kades, 'The American Role in Revising Japan's Imperial Constitution', *Political Science Quarterly* 104 (1989), 215-247, at 221.

³⁹⁷ 'II. Far Eastern Commission and Allied Council for Japan', Soviet-Anglo-American Communique, December 27, 1945, INTERIM MEETING OF FOREIGN MINISTERS OF THE UNITED STATES, THE UNITED KINGDOM, AND THE UNION OF SOVIET SOCIALIST REPUBLICS, MOSCOW, DECEMBER 16-26, 1945, II. Functions, A., 1. and 2.

currently on a fact-finding mission to Japan at the time, and would not return to Washington until at least mid-February, the FEC existed only on paper. This meant that SCAP had time in which it could act on constitutional revision without outside interference.

Based on this, Kades was directed to prepare a memorandum for Whitney's signature on MacArthur's powers as Supreme Commander to deal with fundamental changes in Japan's constitutional structure around 24 January.³⁹⁸ Kades completed the memorandum on 30 January and it was reviewed by three senior GS officers the next day, and signed by Whitney on 1 February.³⁹⁹ The key conclusion of the memorandum was that "in the absence of any policy decision by the [FEC] on the subject...**you have the same authority with reference to constitutional reform as you have with reference to any other matter** of substance in the occupation and control of Japan."⁴⁰⁰ This authority was justified with reference to three key documents: the *Potsdam Declaration*, *SWNCC 228*, and the *Charter of the Allied Council for Japan*. Kades argued that MacArthur had "authority from the Allied Powers to proceed with constitutional reform"⁴⁰¹ based on the *Potsdam Declaration* (interestingly this was the same justification for the establishment of the IMTFE). Paragraph 5 of Truman's directive to MacArthur stated he could "take such steps as you deem proper to effectuate the surrender terms."⁴⁰² Kades held that based on the Instrument of Surrender, Japan had accepted the terms of the Potsdam Declaration, including requirements that the Japanese "remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people"⁴⁰³; and the establishment "in accordance with the freely expressed will of the Japanese people of a peacefully inclined and responsible government."⁴⁰⁴ Kades also drew authority instructions from the Joint Chiefs that directed MacArthur to "exercise your

³⁹⁸ Kades, 'The American Role', at 221.

³⁹⁹ Ibid.

⁴⁰⁰ Brigadier General Courtney Whitney, 'Memorandum for the Supreme Commander. Subject: Constitutional Reform' 1 February 1946, from *PRJ vol. II*, pp. 622-3. [my emphasis]

⁴⁰¹ 'Memorandum for the Supreme Commander' 1 February 1946.

⁴⁰² Addison to Chifley, Cablegram D1470 London, 16 August 1945, 9:40 p.m., from *Documents on Australian Foreign Policy, 1945 – Volume 8*, accessed at <http://www.info.dfat.gov.au/info/historical/HistDocs.nsf/d30d79e4ab5621f9ca256c8600163c0d/23f6c115a8f34e1fca256d32000ba530?OpenDocument> (last accessed 9 April 2015).

⁴⁰³ *Potsdam Declaration*, paragraph 10.

⁴⁰⁴ Ibid., paragraph 12. This was essentially the same consent-based argument used to justify the IMTFE

authority as you deem proper to carry out your mission.”⁴⁰⁵ *JCS 1380/15* set out this mission as including “the strengthening of democratic tendencies and processes in governmental...institutions,” allowing “changes in the direction of modifying the feudal and authoritarian tendencies of the government,” and informing the Japanese “they will be expected to develop a non-militaristic and democratic Japan.”⁴⁰⁶ It was argued on this basis that these aspects of the mission could not be accomplished “without effecting fundamental changes in the Japanese constitutional system.”⁴⁰⁷ Most importantly, the memorandum made clear that this authority to make decisions on constitutional reform remained “substantially unimpaired until the Far Eastern Commission promulgates its own policy decisions on this subject.” The *Charter for the Allied Council* required MacArthur to consult and advise with the Council in advance, but that his decisions on matters would be controlling.⁴⁰⁸ However, if the proposed order concerned constitutional reform and a member of the Council disagreed, the order would be referred to the FEC for consideration.⁴⁰⁹ Kades argued that once the FEC issued a policy directive dealing with constitutional reform, any directive (which Kades defined as ‘order’) upon the Japanese government would be subject to potential objection and review, and MacArthur’s decision would not be ‘controlling’.⁴¹⁰ The key aspect of this is that on Kades and Whitney’s interpretation, only if constitutional reform was by ‘directive’ or ordered was it subject to potential objection and review. If it could be presented as a Japanese initiative rather than ordered by SCAP, it could potentially avoid FEC oversight.

The leak of the Matsumoto draft in the major Japanese newspaper *Mainichi Shimbun* on 1 February, and the impending possibility of FEC interference galvanised SCAP into action. On 2 February, MacArthur ordered GS to prepare an outline of required revisions to guide the Japanese government, changed on 3 February to preparing a detailed model constitution.⁴¹¹ This was deemed “a more effective way to convey to the Japanese

⁴⁰⁵ *Cable No. WX 60333* dated 7 September 1945.

⁴⁰⁶ *JCS 1380/15*, paragraphs 3a, 3c., and 4a.

⁴⁰⁷ ‘Memorandum for the Supreme Commander’ 1 February 1946.

⁴⁰⁸ ‘B. Allied Council for Japan’, Soviet-Anglo-American Communiqué, December 27, 1945, INTERIM MEETING OF FOREIGN MINISTERS OF THE UNITED STATES, THE UNITED KINGDOM, AND THE UNION OF SOVIET SOCIALIST REPUBLICS, MOSCOW, DECEMBER 16-26, 1945, paragraph 5.

⁴⁰⁹ *Ibid.*, paragraph 6.

⁴¹⁰ ‘Memorandum to the Supreme Commander’, 1 February 1946.

⁴¹¹ Dower, *Embracing Defeat*, p. 360.

government the fundamental nature of the constitutional revision required..."⁴¹² This model constitution was to be on the basis of three points communicated by MacArthur (although Kades suggests the author was in fact Whitney).⁴¹³ The draft constitution was to embody three basic principles on the emperor, renouncing war and the 'feudal system, and this was communicated to the officers of GS responsible for constitutional and legal reform (Kades, Hussey and Rowell) who made a tentative plan of a Steering Committee overseeing the work of special committees assigned to draft specific sections. Whitney approved this on 4 February and he ordered the work completed by 12 February.⁴¹⁴ The group worked day and night under secrecy and completed its work two days early on the 10th. Whitney presented SCAP's draft to the Japanese government on 13 February and argued the draft "represent[ed] the principles which the Supreme Commander and the Allied Powers are willing to accept as a basis for the government of Japan because...[they] provide a basis for free democratic government in Japan and for carrying out the terms of the Potsdam Declaration."⁴¹⁵ Whitney emphasised strongly that the draft was in no way being forced on the Japanese, and they were under no compulsion to accept the draft. However, the draft was something that he believed the Japanese people would support, and if the government were not prepared to accept it before the upcoming elections, SCAP would be prepared to present it directly to the people.⁴¹⁶ Japanese government proceeded to discuss the issue in Cabinet on 19 February, but they could not reach agreement. Shidehara took the matter to Hirohito on 22 February, and the Emperor "supported the most thorough-going revision."⁴¹⁷ Japanese officials then prepared a document based on the SCAP draft for submission, and negotiated this with SCAP until 5 March. On this day, an Imperial Rescript was promulgated, referring to the Potsdam Declaration and commanding the government to undertake constitutional revision.⁴¹⁸ The constitution was formally made public as an 'outline' on 6 March, along with a statement from

⁴¹² Kades, 'The American Role', at 223.

⁴¹³ Ibid.

⁴¹⁴ Takemae, *Inside GHQ*, p. 276.

⁴¹⁵ Theodore H. McNelly, "Induced Revolution": The Policy and Process of Constitutional Reform in Occupied Japan in *Democratizing Japan: The Allied Occupation*, ed. R.E. Ward and Sakamoto Yoshikazu, (Honolulu, University of Hawaii Press, 1987) pp. 76-106, at p. 82.

⁴¹⁶ Takemae, *Inside GHQ*, p. 280, Whitney's words were "this constitutional issue shall be brought before the people well in advance of the general election."

⁴¹⁷ *HNMAO* 8, p. 39, *PRJ* vol. I, p. 106.

⁴¹⁸ McNelly, "Induced Revolution", p.84. McNelly 'Induced Revolution', (pp. 83-4) and Dower, *Embracing Defeat*, (p. 387) state that this was for formal legal reasons—the Meiji Constitution was still in force, and Article 73 required the Emperor to initiate any amendment.

MacArthur in which he ended “The Japanese people thus turn their backs firmly upon the mysticism and unreality of the past and face instead a future of realism with a new faith and a new hope.”⁴¹⁹

The 1947 Constitution

While the new constitution was consciously modelled on the Meiji Constitution in terms of its structure, its actual content in many cases was entirely opposite. In many respects, the 1947 Constitution flipped the government and society outlined by the Meiji Constitution on its head. The source of sovereignty and power was now the people and the Emperor had no governmental power. The elected Diet was now the dominant organ of state and the directly elected House of Representatives superior to the Upper House. The Japanese people were no longer described as ‘subjects’, as they had a distinct and detailed corpus of political, civil, social, and economic rights enshrined, without limitation by law. In terms of state structure, the 1947 Constitution substantially modified structures and the relationships between them. The most important of these was the re-shaping of the role of Emperor. Article 1 made this absolutely clear, stating that the Emperor “deriv[ed] his position from the will of the people with whom resides sovereign power.”⁴²⁰ The Emperor’s powers were restricted in Article 4 to “only such acts in matters of state as are provided for in this Constitution” and he was to “not have powers related to government.”⁴²¹ The new constitution also fundamentally reshaped the composition and role of the Diet. Article 41 made this abundantly clear, “The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.”⁴²² The new constitution eliminated the Privy Council and the unelected House of Peers. The latter was replaced by the elected House of Councilors that was subordinate to the lower House of Representatives.⁴²³ The Westminster model was adopted for the budget, as now the budget passed by the House of Representatives could be passed over the objections of the upper house.⁴²⁴ Importantly, the role and powers of the Cabinet were now defined, and

⁴¹⁹ ‘General MacArthur’s Announcement Concerning The Proposed New Constitution For Japan’ 6 March 1946, from *PRJ*, vol. II, p. 657.

⁴²⁰ Article 1, *The Constitution of Japan* [1947 Constitution].

⁴²¹ *Ibid.*, Article 4. These powers are specified in Article 8.

⁴²² *Ibid.*, Article 41.

⁴²³ *Ibid.*, Article 59.

⁴²⁴ *Ibid.*, Article 60.

Cabinet was collectively responsible to the Diet.⁴²⁵ The clear subordination of Cabinet to the Diet was made through the selection of Prime Minister by the Diet and the ability of the Diet to remove a Cabinet by a no-confidence vote.⁴²⁶ The 1947 Constitution had thirty articles concerning civil and political rights; now those of the 'people', not 'subjects' and no longer were these subject to provisions of law. Article 11 made clear that "the people shall not be prevented from enjoying any of the fundamental human rights". This new charter of rights set out equality under the law, inalienable rights to elect public officials, rights of petition for redress, freedom of thought, religion, assembly and expression.⁴²⁷ State education was made both a right and compulsory under Article 26. Articles 31 to 40 gave the Japanese people rights regarding the legal and judicial processes including the right of access to the courts and against arbitrary search and seizure.⁴²⁸

Perhaps the most well-known article of the 1947 Constitution is Article 9 concerning the renunciation of war:

***Aspiring sincerely to an international peace based on justice and order,** the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.*

***In order to accomplish the aim of the preceding paragraph,** land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognised.*

However, Article 9 as it appeared in the original SCAP draft, and Article 9 as it appears in the 1947 Constitution are not the same as the bolded sections above were added by the Japanese. In discussing the 1947 Constitution it is important to remember that the draft produced by SCAP was not the constitution that came into force in 1947. The SCAP draft was merely a starting point for negotiations and discussions between SCAP and the Japanese government, and among the Japanese government through to November 1946. The constitution made public on 6 March 1946 had already gone through a process of negotiation between SCAP and the Japanese government, and the process of formally

⁴²⁵ 1947 Constitution, Article 66.

⁴²⁶ Ibid., Articles 67 and 69.

⁴²⁷ Ibid., Articles 14-17, 19-21.

⁴²⁸ Ibid., Articles 32 and 35.

making the constitution law through the houses of the Diet involved further negotiation and amendment. This process of 'Japanising' the draft was important because in one sense it dealt with the problems associated with imposing a constitution.⁴²⁹ While SCAP influenced proceedings, the Japanese deliberations and amendments meant that the constitution passed was something that they were willing (issues of coercion or perceived coercion aside) to pass, and a constitution that they had become theirs as well as SCAP's. Article 9 is an interesting case study of the 'Japanising' process in action.

The idea of removing militarism was a key plank of Allied planning for the occupation of Japan, as militarism was one of the key problems to be solved in shaping the new Japan. Article 9 was perhaps the most explicit anti-militarist action taken during the Occupation, going even further than demobilisation and purges. These actions focused on the past and present problem by ending the existence of the armed forces and removing problematic individuals from positions of power and influence. As a solution, Article 9 looked to the future by removing the ability of the state to even wage war and moreover for armed forces to exist at all; no military meant no militarism. The genesis of Article 9 has been the subject of much debate, with different claims as to its origins and influences. The idea of renouncing war was not unprecedented, as it had appeared in several international treaties in the interwar period. The most notable of these was the Kellogg-Briand Pact 1928, where Article I stated "The High Contracting Parties...that they...renounce [war] as an instrument of national policy."⁴³⁰ This treaty (to which Japan was a signatory) was used to justify the charge of crimes against peace at the Tokyo trial. Nakagawa Tsuyoshi argued that the constitutional renunciation of war was drawn from the Philippine Constitution (1935, Article 2).⁴³¹ Koseki argues that MacArthur had this in mind when SCAP began their drafting work in 1946.⁴³² Kenneth Port notes that MacArthur himself claimed the idea came from Prime Minister Shidehara.⁴³³ McNelly raises the possibility that it was Kades who inspired Article 9, while Koseki suggests the source must have been

⁴²⁹ The phrase 'japanising' is used by several scholars, including Takemae (*Inside GHQ*, p. 287), and Dower (*Embracing Defeat*, p. 391).

⁴³⁰ *Kellogg-Briand Pact 1928*, Article I.

⁴³¹ Nakagawa Tsuyoshi, "Nichihi ryōkoku kenpō ni miru ruien," *Chūō kōron* (May 1987), p. 185, cited by Koseki, *The Birth of Japan's Postwar Constitution*, p. 85.

⁴³² Koseki, *The Birth of Japan's Postwar Constitution*, p. 85.

⁴³³ Kenneth L. Port, 'Article 9 of the Japanese Constitution and the Rule of Law,' *Cardozo Journal of International and Comparative Law* 13 (2005) 127-160, at 138.

MacArthur.⁴³⁴ Whatever and whoever was the source, it is clear that the renunciation of war was a key aspect of SCAP's intentions for the Japanese constitution.

However, the modification of Article 9 began even at this point. Kades argues that in drafting the SCAP draft, he omitted a particular phrase present in the MacArthur notes "even for preserving its own security", believing it unrealistic to ban a nation from exercising its inherent right of self-preservation.⁴³⁵ Article 9 aroused great attention from the moment of publication in March, and as part of the formal process, the Special Committee on Revision of the Imperial Constitution discussed the issue from 28 June. A subcommittee was established under Hitoshi Ashida which was charged with producing an amended draft incorporating the changes made. Koseki notes that discussion about Article 9 began from 27 July and various views were expressed.⁴³⁶ The subcommittee made the change that has come to be known as the 'Ashida amendments' in Article 9. The phrases inserted by the subcommittee made the provisions somewhat more ambiguous than originally intended. McNelly noted that the change in the first paragraph "may be interpreted to mean that war and the threat or use of force are renounced only as a means of settling international disputes."⁴³⁷ By this interpretation, self-defence remained permissible and this is the likely reason the amendment was approved, as it fitted with Kades' earlier re-interpretation. Given that self-defence was the entire rationale for the Pacific War this re-interpretation might suggest an unwillingness to break with the past. The phrase added onto the second paragraph could be interpreted as qualifying the renunciation of armed forces to allow armaments (and forces) for self-defence. However, both Koseki and Dower emphasise that these interpretations of Ashida's amendments emerged after that of the Japanese Self-Defence Forces. Ashida himself claimed it had been his purpose from the outset to allow for these.⁴³⁸ However, from the records of the Diet's discussions and the subcommittee, there was no explicit discussion of revision on these terms.⁴³⁹ Based on this, it is likely going too far to read back an intention to establish self-defence forces to 1946, however the Japanese amendment was important in allowing

⁴³⁴ McNelly, "Induced Revolution", pp. 79-80; Koseki, *The Birth of Japan's Postwar Constitution*, p. 85.

⁴³⁵ Kades, 'The American Role', p. 236.

⁴³⁶ Koseki, *The Birth of Japan's Postwar Constitution*, p. 198.

⁴³⁷ McNelly "Induced Revolution", p. 92.

⁴³⁸ Dower, *Embracing Defeat*, p. 396; Koseki, *The Birth of Japan's Postwar Constitution*, pp. 195-198.

⁴³⁹ Dower, *Embracing Defeat*, p. 396.

that to occur. The amendment of Article 9 during Diet deliberations is therefore a useful example of how the Japanese modified SCAP's vision, while retaining its key ideas.

German constitutional revision

The emergence of the postwar constitution of the *BRD* in 1948-9 involved far less Allied intervention than in Japan. This was in part due to the fact that Allied authorities were much less involved in administration and government by this time, and their aim was to transfer these tasks to a German government. The absence of intervention was also due to the fact that unlike Japanese authorities in 1945 and early 1946, the Germans largely complied with what the Allied authorities expected and desired in the new constitution. While the conventional view of many (especially German) scholars has been to downplay the Allied role in the drafting of the *Grundgesetz*, and the German drafters were in one sense able to push against Allied pressure more effectively given the political circumstances, Allied pressure nevertheless was present and important in shaping the *Grundgesetz*, as it emerged because of the London Conference in 1948 between the three Western occupying powers and Belgium, the Netherlands and Luxembourg. The conference saw the decision to fuse the Western zones and consolidate economic integration, and occurred during a period of increasing tensions over Berlin.⁴⁴⁰ The discussions at the Conference resulted in six major recommendations, including "the evolution of political and economic organization of Germany."⁴⁴¹ The Six Powers concluded that "...taking into account the present situation, that it is necessary to give the German people the opportunity to achieve on the basis of a free and democratic form of government."⁴⁴² However, given the political circumstances in Germany, it was recognised "it would now be desirable that the German people in the different states should now be free to establish for themselves the political organization and institutions which will enable them to assume those government responsibilities...which will ultimately enable them to assume full governmental responsibility."⁴⁴³ Based on this, it

⁴⁴⁰ Wolfram F. Hanreider, *West German Foreign Policy 1949-1963: International Pressure and Domestic Response*, (Stanford, Stanford University Press, 1967), pp. 29-30.

⁴⁴¹ 'Communiqué of the London Conference on Germany, Released to the Press on June 7, 1948' in FRUS, 1948, Vol. II, *Germany and Austria*, (Washington DC, US Government Printing Office, 1948), pp. 313-317, at p. 314.

⁴⁴² Ibid.

⁴⁴³ Ibid., pp. 314-315.

was decided that the Military Governors of the zones should hold a meeting with the Ministers-President of the *Länder* of the Western zones. At this meeting, they would be authorised to convene a Constituent Assembly in order to prepare a constitution for approval by the *Länder*.⁴⁴⁴

Importantly, the Six Powers also agreed on the general principles that this constitution should meet. The constitution was “to be such as to enable the Germans to play their part in bringing an end to the present division of Germany not by the reconstitution of a centralized Reich but by means of a federal form of government.”⁴⁴⁵ This government was to be one that balanced the rights of the *Länder* with adequate central authority, and importantly guaranteed the rights and freedoms of the individual. While the actual process of drafting was to be left to the Germans, it was made clear that Allied confirmation was necessary; “If the constitution as prepared...**does not conflict with these general principles** the military governors will authorize its submissions for ratification by the people in the respective states.”⁴⁴⁶ This statement made clear to the Germans (and others), that the prospective constitution was to fulfil Allied desires, and perhaps implicitly lay down the threat of more direct intervention (as occurred in Japan) if the constitution was not up to standard. This was reinforced in the ‘Frankfurt Documents’, which were drafted at the London Conference, and presented to the Minister-Presidents of the western *Länder* in a meeting at Frankfurt-am-Main on 1 July 1948. The first of these concerned the Constituent Assembly, to be held not later than 1 September, and set out the procedure for selection of delegates. The document repeated what was resolved at the London Conference, especially the point that the constitution should “contain guarantees of individual rights and freedoms.”⁴⁴⁷

In response to this, the Minister-Presidents met at Koblenz between 8 and 10 August 1948, and concluded concerning Document I that they would assume the powers

⁴⁴⁴ ‘Communiqué of the London Conference’ *FRUS, 1948, Vol. II* p. 315.

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid.* [my emphasis].

⁴⁴⁷ Document I: Constituent Assembly, ‘Directives Regarding the Future Political Organization of Germany, drafted at the London Conference of the Western Foreign Ministers in June 1948 and handed to the Ministers President of the Western Zones of Germany by the Military Governors at Their Joint Meeting on 1 July 1948’ in *Documents on Germany under Occupation, 1945-54*, (London, Oxford University Press, 1955) pp. 315-318, at pp. 315-16.

delegated. However, "The convening of a German National Assembly and the preparation of a German constitution shall be postponed until a solution for all of Germany is possible and until German sovereignty has been sufficiently restored."⁴⁴⁸ They requested that the Constituent Assembly be referred to as the 'Parliamentary Council' (*Parlamentarischer Rat or PR*), and the constitution called a 'Basic Law' emphasising its provisional and temporary nature. The Allied Military Governors at a meeting on 26 July accepted this.⁴⁴⁹ A meeting of constitutional experts nominated by the Minister-Presidents was convened from 10-23 August 1948. Their deliberations produced a draft including clear individual rights, a bicameral national legislature, an executive dominated by the Chancellor, an independent judiciary with constitutional court, and a federal structure where the *Länder* exercised significant powers over their own affairs. The *PR* began its deliberations based on this draft on 1 September and Edmund Spevack notes that the Allies monitored both, and they maintained a physical presence in Bonn during the *PR*'s deliberations (including British wiretaps).⁴⁵⁰ The Allies largely avoided direct intervention in the process, however French concerns about the articles on federalism led Allied officials to present an 'aide-mémoire' to the *PR* on 22 November 1948. The key issue concerned taxation and the balance between *Länder* and the federal state. The Germans proposed all taxes be managed by a central agency to allow for transfers between *Länder*. The French advocated against this, arguing it was in breach of the Allied directive that the federal government should only raise or spend such revenues as necessary for its constitutional duties. The aide-mémoire contained the basic requirements by which the Allies would evaluate the *Grundgesetz*, however Erich Hahn argues the *PR* simply ignored this, as it did responses from the military governors in December.⁴⁵¹ The *PR* finally completed the draft *Grundgesetz* on 10 February 1949, and the military governors found it unsatisfactory, primarily based on the earlier issue of taxation. Negotiations over the issue reached an impasse as the Germans would not give way, and while there was some level of

⁴⁴⁸ Comments of the Minister President's Conference regarding Document I, 'The "Koblenz Decisions" of the West German Minister Presidents (July 10, 1948)', accessed at http://ghdi.ghi-dc.org/sub_document.cfm?document_id=2851 (last accessed 9 April 2015).

⁴⁴⁹ Reply of the Ministers President to the Proposals Made by the Military Governors Following the London Decisions, 26 July 1948, *Documents on Germany under Occupation*, pp. 332-330, at p. 329.

⁴⁵⁰ Edmund Spevack, 'American Pressures on the German Constitutional Tradition: Basic Rights in the West German Constitution of 1949' *International Journal of Politics, Culture & Society* 10 (1997) 410-436, at 425.

⁴⁵¹ Erich J.C. Hahn, 'The Occupying Powers and the Constitutional Reconstruction of West Germany, 1945-1949' in *Cornerstone of Democracy – The West German Grundgesetz 1949-1989, Occasional Paper No. 13* (Washington DC, German Historical Institute, 1995) pp. 7-36, at pp. 24-27.

compromise over the problematic articles, the Germans largely got their way.⁴⁵² However, this view ignores the drawn-out negotiations between the military governors/Allied governments and the Germans on the issue of the *Grundgesetz*; so much, so that it was not finally able to be passed until April 1949.⁴⁵³ Spevack highlights that the Occupation Statute of 10 April 1949 reserved to the Allies the right of final approval, and the *Grundgesetz* required formal approval from the military governors (granted on 12 May) before coming into force on 23 May.⁴⁵⁴

The *Grundgesetz* in its own way is as remarkable a document as the 1947 Constitution, not as an example of progressivism but as an example of a constitution that fundamentally reshaped the nature of the German state. While it drew upon previous German models and thinking it was not simply the Weimar constitution tweaked but a document setting out the fundamental supremacy of the constitution itself as the highest law and strictly setting out relationships between the state and society, and between state organs. The *Grundgesetz* was also an explicitly **defensive** document. It contained several articles aimed at avoiding the problems of the past by making unconstitutional attempts or advocacy against the democratic nature and principles of the Republic. Article 79 concerning amendment specifically stated that any amendment to Articles 1 and 20 would be inadmissible. Several of the articles concerning rights contain exceptions for those acting against democratic principles or the constitutional order. The *Grundgesetz* might be seen as an example of 'militant democracy' in action. This phrase was coined by the German émigré Karl Loewenstein in 1937 in terms of democracy that armed itself against the rise of fascism, and against the use of democratic rights of free expression, association, assembly and political rights in order to undermine democracy.⁴⁵⁵ Rory O'Connell argues that the key lesson of the collapse of Weimar was that enemies of democracy should not be allowed to use the rights and freedoms of democracy in order to undermine it. Further, he argues that the *Grundgesetz* was a clear demonstration of

⁴⁵² Erich H.C. Hahn, pp. 31-35.

⁴⁵³ Michael H. Bernhard, *Institutions and the Fate of Democracy: Germany and Poland in the Twentieth Century*, (Pittsburgh, University of Pittsburg Press, 2005) pp. 142-147 gives a good narrative of the process.

⁴⁵⁴ Spevack, 'American Pressures', 426.

⁴⁵⁵ Karl Loewenstein, 'Militant Democracy and Fundamental Rights' *American Political Science Review* 31 (1937) 417-32.

understanding this lesson.⁴⁵⁶ Spevack also sees the *Grundgesetz* as a defensive document, focusing on defending democracy from internal political challenges that had proved fatal to the Weimar Republic.⁴⁵⁷ These claims are persuasive, given both the specified individual rights and the exceptions made for those aiming to undermine democratic principles.

Articles 1 to 19 set out basic individual rights of the German people. Article 1 gave a clear statement of intent for the *Grundgesetz* as a whole, stating, “The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledges inviolable and inalienable human rights as the basis of every human community, of peace and justice in the world.”⁴⁵⁸ Other specific individual rights guaranteed included equality before the law, freedom of faith and conscience, peaceful assembly, and privacy.⁴⁵⁹ Articles 20 to 37 set out both the nature of the federal state and its relationship with the *Länder*. Article 20 defined Germany as “a democratic and social federal state.” Further, it was made clear that “all state authority emanates from the people,” and that organs of government exercised their authority on behalf of the people.⁴⁶⁰ Articles 25 stated that general rules of international law were part of, and superseded, federal law. In terms of the legislature, the *Grundgesetz* created a bicameral legislature, with the lower *Bundestag* being directly elected, and the upper *Bundesrat* representatives appointed by the *Länder*, with the *Bundestag* superior. However, these were set up with important safeguards in mind. Political parties were constitutionally recognised bodies as per Article 21, however they were required to “conform to democratic principles.” Parties which did not “seek to impair or abolish the free democratic order or to jeopardize the existence of the [BRD] shall be unconstitutional.”⁴⁶¹ Articles 92 to 104 concerned the judiciary, creating the Federal Constitutional Court that was designed to be (and has proven to be) an exceedingly strong and independent court. The *Grundgesetz* listed sixteen specific categories of constitutional disputes over which

⁴⁵⁶ Rory O'Connell, 'Militant Democracy and Human Rights Principles' *Constitutional Law Review* 1 (2009) 84-90 at 84.

⁴⁵⁷ Spevack, 'American Pressures', 419-420.

⁴⁵⁸ *Basic Law of the Federal Republic of Germany (23 May 1949) [Grundgesetz]* accessed at http://www.cvce.eu/content/publication/1999/1/1/7fa618bb-604e-4980-b667-76bf0cd0dd9b/publishable_en.pdf (last accessed 9 April 2015).

⁴⁵⁹ *Ibid.*, Articles 3, 4, 8, and 11.

⁴⁶⁰ *Ibid.*, Article 20 (1),(2).

⁴⁶¹ *Ibid.*, Article 21.

the court had jurisdiction, and it had a power of judicial review similar to that of the US Supreme Court (i.e. the ability to strike down legislation incompatible with the *Grundgesetz*). However, in addition to this power it had one of ‘abstract judicial review’ in Article 93(2) in that where “differences of opinion or doubts” on constitutionality can be reviewed on application of the Federal or *Land* government, or by a vote of one-third of the *Bundestag*. Donald P. Kommers describes this role, as “a major function of the FCC, as the guardian of the Basic Law, is precisely to resolve such doubts when raised by major political officials or state actors in managing the course of the nation's public life.”⁴⁶² This has meant that what would in other nations be political issues, in Germany have become judicial issues as well, and the judges of the FCC able and willing to pronounce on the acceptability of state action *before* it has taken place. The *Grundgesetz* also addressed the concern about aggressive war, and included an indirect renunciation of war. Article 26 sets out a similar statement to Article Nine of the 1947 Japanese Constitution in terms of a commitment to international peace. The paragraph stating “Activities tending to disturb or undertaken with the intention of disturbing the peaceful relations between nations, and especially preparing for aggressive war, shall be unconstitutional”⁴⁶³ was perhaps less succinct and literary compared to Article Nine, but the same constitutional limitation around war existed in the *Grundgesetz*. Importantly however, this did not extend to the constitutional barring on armed forces and while the non-existence of German armed forces was a matter of fact in 1949, the lack of specific constitutional restriction allowed the *BRD* to re-establish armed forces in 1955.

Overall, the state structure created by the *Grundgesetz* was one specifically designed to avoid the problems of the past. By reinforcing the ideas about the rights of citizens and the limitation of state power, and in a democratic and limited state structure, the aim was to eliminate the ability of something like the *NSDAP* from ever rising and taking control of the state again. In terms of this thesis, there is rather much less to say about the genesis of the *Grundgesetz*, given that the Allied role in it was much less interventionist than in Japan. One reading of this might be that the Germans understood the implicit threat of direct Allied intervention if their own efforts were not acceptable. The conventional

⁴⁶² Donald P. Kommers, 'The Federal Constitutional Court: Guardian of German Democracy', *Annals of the American Academy of Political and Social Science* 603 (2006) 111-128, at 115.

⁴⁶³ *Grundgesetz*, Article 26(1).

arguments have largely focused around two ideas, the first of American and Allied dominance of the process, and the second (largely German) argument emphasising German independence and initiative. One part of the former argument is the idea that individual basic rights as in the *Grundgesetz* were something new in German constitutional thinking, and that they were specifically included as a result of Allied pressure in 1948 and 1949. It certainly is true that the Allies emphasised the need for the inclusion of individual human rights, however Spevack argues convincingly that this was not new to German legal thinking (having been a part of the 1848 revolutionary movements and the Weimar Republic).⁴⁶⁴ The other aspect of the argument focusing around German initiative and independence focuses on the debates over taxation and the powers of the federal state. While to some extent, a compromise solution was found, and the Germans were able to push back against Allied requirements for the federal state, the reality is that this compromise concerned an issue that was not necessarily non-negotiable. In the end, the Allies were willing to give some ground on the issue and while it does reflect the differing circumstances of the making of the German and Japanese constitutions, it does not lessen the realities of Allied control. Erhard H.M. Lange noted that even with the *Grundgesetz*, the Occupation Statute passed in April 1949 reserved the right of all final decisions to the Allies, describing this as “Germany's actual constitution.”⁴⁶⁵

Conclusion

Demobilisation both immediate and long-term was a central part of Allied plans for the occupied states. Practically, dismantling what enemy armed forces still existed at the end of hostilities was important for security reasons and a relatively simple method of ensuring that continuing resistance was not possible. In both cases, the process was completed peacefully and with the co-operation of the Germans and Japanese. With the exception of enemy personnel in Soviet custody, by the end of 1947 the majority of Japanese and German military personnel had been demobilised. More importantly than the demobilization of the largely conscripted militaries was the dissolution of military

⁴⁶⁴ Spevack, ‘American Pressures’, 413-415.

⁴⁶⁵ Erhard H.M. Lange, *Die Wuerde des Menschen ist Unanstatbar: Der Parlamentarische Rat und das Grundgesetz*, (Heidelberg, 1993), p. 149 [cited by Spevack, ‘American Pressures’, at 426]

institutions themselves. The administrative ministries and the command and staff institutions of the defeated militaries ceased to exist and institutions that had a powerful influence over governments, wider politics and society at large in pre-war Japan and Germany were mere memory. After the physical destruction wrought by war, and the presence of the victors' armies, this was one of the strongest symbols of Japanese and German defeat.

The constitutional revisions that took place under Allied supervision in occupied Japan and Germany were a key part of the political reforms and reorientation that the occupiers wished to undertake. While the specific processes and degree of Allied intervention differed between Japan and Germany, the new constitutions of both states were drafted and implemented according to Allied desires for political reorientation. Constitutional revision took into account both the perceived mistakes of the past, and the desired objectives for the future. An important connecting idea was that in one sense, the constitutions of Japan and Germany had failed to stop their peoples becoming victims of the regime. In this sense, along with trials and purges of the supposed criminals, constitutional revision was a positive counterpart to this as it focused on reshaping and building new political and legal structures to avoid the mistakes of the past and change society for the future. Constitutional revision was an answer to one of the key problems perceived in the pre-surrender regimes and their forebears in Japan and Germany, both in pre-surrender planning and as argued at the international tribunals. In part, the militarists were able to take and maintain their power in Japan because of the flaws in the Meiji Constitution which created an overly strong and unchecked executive, individual 'rights' that were more like privileges, and an effectively independent military. The 1947 Constitution set out clear individual rights, supreme over normal law and without the giant loophole that allowed the state to abrogate political and civil rights at will. It also modified state structures that placed dominant power in the hands of a directly elected legislature, created a responsible and limited executive and most importantly both renounced war as a legitimate right but also forever renounced a military. In Germany, the *Grundgesetz* was specifically designed to deal with the problems and flaws of the Weimar Republic, by both limiting executive authority but also placing important safeguards against both the abuse of state power and the ability of undemocratic forces to organise and undermine democracy.

Important in the constitutional revision in both Japan and Germany was not only the presence and intervention of Allied authority throughout the process, but also the degree of collaboration involved. The Allied occupiers understood that a constitution that was seen as a foreign imposition was both unlikely to survive the end of occupation intact, and contravened democratic principles. To this end, the initial approach was to encourage Japanese and German authorities to undergo constitutional revision on their own authority although under Allied directives and supervision. The *Grundgesetz* was largely a German document, although one drafted under Allied directives, supervision and the result of compromises made because of Allied interventions. The dramatic drafting of the Japanese constitution by SCAP in February 1946 was the result of the failure of the Japanese government to undertake constitutional revision 'properly'. Yet, the Japanese government was not representative of Japanese political society, and its inability (or unwillingness) to grasp the real changes the Allies desired was not one of Japanese political society. Furthermore, the 1947 Constitution that finally emerged from the SCAP draft was the result of a long process of negotiation and compromise, both between SCAP and the Japanese, and within Japanese government. These processes in the defeated Allied states are an exemplar of the kind of political reorientation which was argued for by moderate peace advocates; in its own way radical, but aimed at removing the problems of the past understood through the lens of a particular conception of the pre-surrender regimes. They also highlight the importance of collaboration in the political reorientation of Japan and Germany, and how the occupations were not simply a story of Allied occupiers doing what they saw fit.

Chapter 5: Changing Hearts and Minds — analysing social reorientation through education reform in Allied-occupied Japan and Germany

Introduction

For the occupiers to succeed in fulfilling their major objectives of democratisation, demilitarisation and de-radicalisation, it was not enough to simply change enact and encourage political and institutional reforms. Although these reforms gave the Japanese and Germans the means of forging or creating democracy by encouraging democratic government and political life, more deeply-rooted democracy is more than political structures and legal rules, and requires the citizenry to think and act democratically. The social reorientation reforms, which sought to mould the minds of future generations into citizens of a democratic body politic, were the most ambitious undertaken by the Allied occupiers. Even beyond the reforms of structures discussed in the previous chapter, social reorientation reforms were of the utmost importance in the long-term reformation of Japan and Germany. Perhaps the most important lesson out of the failure of the Weimar Republic, and the reversal of *Taishō* democracy was the need for the people to truly desire democracy and work towards it. It was not enough for the structures of government to be democratic for democracy to survive and flourish as the Weimar Republic had shown. The removal of anti-democratic elements from society was deemed necessary by the occupiers for the long-term aims of the occupations to succeed.

Education was identified as a key battleground in the effort to rebuild and reorient the occupied states. The language used in planning documents, directives and by officials themselves shows that they understood the importance of education, and of reforming education, in helping to ensure the long-term success of Allied occupation reforms. The importance of education was also part of the prosecution narratives at the international criminal tribunals in the attempt to show how the accused and the criminal regimes they represented had victimised the populations and sought to control society. Several of the accused at both tribunals were specifically indicted for their involvement with education and other related areas in terms of the role that education played in preparing Japanese and German society for war. Beyond this, education was perceived as yet another part of the ‘problem’ of pre-surrender Japan and Germany that the Allies sought to solve. The

occupiers identified areas of education seen as problematic and anti-democratic that had predated the militarist and *NSDAP* regimes that required reform in the same way the constitution had. In essence, the same attitude was held where the conspirators had deliberately misshaped the education system and the criminal regimes were able to take advantage of it. More importantly though, the systems were fundamentally flawed in the kind of citizens that they produced. In one sense, social reorientation undertaken during the occupations was a repeat of actions undertaken by the *NSDAP* and the authoritarian Japanese cliques during the 1930s and first half of the 1940s. The Allied occupiers sought to utilise the educational system in order to inculcate the occupied with their particular political and social views, and shared the understanding with the former enemy regimes of the absolute importance of education and the control of information in shaping society. The approaches to education and its reform were broadly similar in Japan and Germany, however there were important differences in the details of these reforms, their implementation and their perceived success. Despite these differences, overall it is clear that education reform was a key method of social reorientation and reflective of the desire to reshape the former enemy states.

Japan

In Japan, the greater degree of American control, as well as a longer period before Cold War tensions began to intrude on occupation reforms compared to Germany, meant that liberal education reform was more comprehensive in nature. Among the varied areas of the educational system reformed, those discussed are the negative reforms of removing anti-democratic regulations and personnel, and the positive reforms of textbook and curricula reform, and the decentralisation of administration. All these areas involved the removal of perceived anti-democratic elements and/or the introduction of more democratic ideas and systems into Japanese education. An important element of education reform in Japan was the widespread and large-scale collaboration of Japanese officials, teachers, and educators. Of the reforms discussed in this thesis, education was the most collaborative between the Americans and Japanese. The latter's involvement was important both in ensuring the genuine success of the education reforms but also in helping to show that the Allied occupations were not solely about the imposition of reform from outside.

Education at the IMTFE

Education was one of the subjects discussed by the prosecutors at the IMTFE in relation to the purported conspiracy of the defendants towards aggressive war. It was identified as one of the key methods by which the prosecutors claimed the conspirators had ‘prepared’ Japan for the future aggressive wars, and as a method of social control. Two of the accused (Araki Sadao and Kido Koiichi) in particular were judged for the formal positions relating to education, and their purported roles in the militarisation of education during the conspiracy period. In his opening statement, Chief Counsel Keenan outlined the basic argument concerning education;

the military in Japan had sponsored, organized and put into effect in the public school system of Japan a program designed to instil a militaristic spirit in the youth of Japan and to cultivate the ultra-nationalistic concept that the future progress of Japan was dependent upon wars of conquest.⁴⁶⁶

The theme of the conspirators utilising education as a method of control and indoctrination was part of the discussions on the internal preparations of Japan for war. After discussing the economic and military preparations, it was argued that in order for these to be carried out, “it was necessary to prepare the Japanese people psychologically for war, so that they might feel it to be necessary and even come to desire it. **This mission was accomplished through instruction in the schools...**”⁴⁶⁷ While recognising the importance of the existing military influence within education in Japan, the prosecutors argued that this was extended and intensified during the period of the conspiracy and that this meant “[it] was a relatively easy matter for the conspirators...[given a] strongly entrenched position in the school system of Japan.”⁴⁶⁸ This meant that while the introduction of compulsory military training in schools was implemented before 1928, the existing presence of military officers meant that from the Manchuria Incident in 1931, military officers became more dominant in schools, and “they instructed the heads of schools on how the courses and the administration of the school should be conducted.”⁴⁶⁹ The appointment of Araki as Minister of Education in May 1938 was highlighted in

⁴⁶⁶ Northcroft Collection, *Opening Statement*, p. 32.

⁴⁶⁷ Northcroft Collection, *Final Addresses Volume 2*, F-73 [my emphasis]

⁴⁶⁸ Ibid.

⁴⁶⁹ *Final Addresses Volume 2*, F-74. Maeda was the Minister of Education in the last pre-surrender Cabinet.

particular, with Araki being described as “a former general and War Minister, whom the evidence has shown to be one of the leading chauvinistic rabble-rousers of Japan.”⁴⁷⁰

Three particular aspects of military involvement in education were emphasised by the prosecution; military drills and instruction in schools, control of textbooks and curricula, and the intimidation or removal of opposition. The prosecutors emphasised that the military drills went beyond physical fitness and basic skills, but also extended to advanced military training such as long difficult marches and training with weapons up to light machine guns.⁴⁷¹ After 1941, increasing amounts of time were devoted to military training in schools, in some cases a period equivalent to or larger than the time devoted to academic courses.⁴⁷² Perhaps more than military training was the level of indoctrination perceived to exist, as the prosecutors argued,

[military training] was a relatively small part. Much more time was spent in militarizing the minds of the students through methods of instruction and teaching materials used for the principal academic subjects which lend themselves readily to such instruction, such as history, civics, geography and ethics.⁴⁷³

While as before this indoctrination was not necessarily new, the prosecutors claimed the conspirators exploited education to further their ends. The prosecutors put forward that “After 1936, textbooks – devoted to Japan’s wars and battles – were used to inculcate patriotism.”⁴⁷⁴ This was aided by the establishment of the Educational Council under Minister of Education Kido in 1937 to ‘renovate’ the system. While the Council’s proposals were not implemented until 1940,

the effects of the deliberations of the Council, according to the **witness KAIGO**, was felt from 1937 on, for education was based on the idea of promoting the patriotic feeling of the nation. In this teaching, the supremacy of Japan was stressed and the students were taught that Japan was strong and must show her special characteristics to the world.”⁴⁷⁵ It was also alleged that the *Mombushō*

⁴⁷⁰ *Final Addresses*, Vol. 2. F-75 and Ex. 103, T 668-9

⁴⁷¹ *Ibid.*, F-75-76

⁴⁷² *Ibid* F-77.

⁴⁷³ *Ibid.*

⁴⁷⁴ *Ibid.*, at F-78.

⁴⁷⁵ *Ibid.*, also *Transcripts* 892-897.

under Araki issued instructions “that the students must be made to realize how great and important their duties were to the State.”⁴⁷⁶

The textbooks and curricula of Japanese schools were utilised towards this end, described in the testimony of Col. Donald Nugent as having

inculcated ultra-nationalism, aggressive militarism, blind devotion to authority, belief in Japan’s ambition to be dominant in Asia, belief in Japan’s superiority and divine mission, and belief in the necessity of military aggression if necessary to accomplish that mission.⁴⁷⁷

Maeda further testified about the 1941 textbooks that they “taught Japan’s superiority, so confusing fact with mystery and legend and containing so much admiration and homage to military officers and the idea of absolute subjection of the individual in favor of the state.”⁴⁷⁸ The prosecutors also argued that the conspirators engaged in intimidation and suppression of any opposition to the militarisation of schools. According to the witness Ouchi, “failure to cooperate fully brought dismissal or imprisonment, and all expressions in favor of peace or in opposition to preparations for aggressive warfare were rigidly suppressed in both teachers and students.”⁴⁷⁹ The crux of the prosecution narrative was to highlight the role that education had played in the ‘internal preparations’ for Japan’s aggressive war. This involved a build-up of military materiel and the making of economic and financial preparations towards war. Beyond this, it involved the increasing militarisation of education with the aim of both preparing future soldiers through instruction and drills and through inculcating students with militaristic and nationalistic ideas. With propaganda and information control, education was presented as one of the key methods by which the conspirators had ‘mentally’ prepared the Japanese population for war. However, in a wider sense, the prosecutors had problematised education in Japan by identifying it both as a symptom and as cause of militarism and nationalism.

⁴⁷⁶ *Final Addresses*, Vol. 2, F-78. The term *Mombushō* was the Japanese term for the Ministry of Education.

⁴⁷⁷ *Ibid.*, at F-79, *Transcripts* 830-836

⁴⁷⁸ *Ibid.*

⁴⁷⁹ *Ibid.*, at F-80.

The problem of education

Similar to the rhetoric used to describe the political system of Japan, the Allied occupiers constructed a narrative around the educational system of Japan as a ‘problem’ to be ‘solved’. The problem of education was identified especially in three particular factors — its flawed Meiji-era origins, the increasing militarisation of the *Shōwa* period, and the perceived inherent failings and problems of the education system. These three factors together helped to build the narrative structure of the problem of education identified by Allied officials seeking to implement education reform. Several scholars have noted that the problem that the US saw with education in Japan was simply that it was not ‘American’ enough. Harry Wray argued that American political traditions associated with figures such as Thomas Jefferson and Andrew Jackson emphasised that centralised power and administration was undemocratic. This idea still held currency despite the interventionism of the New Deal as Wray argued, “centralization was associated with despotism, bureaucratization, standardization, and denial of both state powers and autonomy.”⁴⁸⁰ In this view, education reform was largely about the attempt to transplant the US education system and its ideals onto Japan, whether or not these were practical in Japan. The US drive for decentralisation and local administration in particular supports this argument as much of the rhetoric around this particular reform emphasised the ‘anti-democratic’ nature of centralised administration. This is despite the fact that centralised administration of education was the norm in healthy Western European democracies such as the UK and France as Edward Beauchamp noted of the USEM Report that “many of [the] recommendations would have seemed strange to Europeans in 1946.”⁴⁸¹ The dichotomy of centralised being bad, and decentralised being good was very much an American view.

The Meiji period saw the establishment of a modern system of education in Japan from the 1870s through to the 1890s. The period saw the adoption of Western models and structures in Japanese society and government, and education was no exception. SCAP documents described the Meiji system as one where “the purposes of this new education

⁴⁸⁰ Harry Wray, ‘Decentralization of Education in the Allied Occupation of Japan, 1945-1952’, in *The Occupation of Japan: Educational and Social Reform*, ed. Thomas W. Burkman, (Norfolk, MacArthur Memorial, 1982), pp. 143-174, at p. 148.

⁴⁸¹ Edward Beauchamp, ‘Educational and Social Reform in Japan: The First United States Education Mission to Japan, 1946’, in *Ibid.*, pp. 175-192, at p. 188.

were to provide a populace that would be both technically competent in the skills necessary to operate a modern state and indoctrinated with the principles upon which the unity of that state rested.”⁴⁸² Fear of modernisation and the desire to re-emphasise traditional ethical and moral values in the rapidly modernising Japan led to the drafting and issuing of the *Imperial Rescript on Education* on 30 October 1890. The *Rescript* was not a formal instrument, and technically did not even have force of law, as a minister did not countersign it.⁴⁸³ Nolte and Hajime argue that this was intentional, as the drafters aimed to frame the *Rescript* as a moral, rather than legal or political statement.⁴⁸⁴ The *Rescript* exhorted students to “pursue learning and cultivate arts, and thereby develop intellectual faculties and perfect moral powers...always respect the Constitution and observe the laws; should emergency arise, offer yourselves courageously to the State; and thus guard and maintain the prosperity of Our Imperial Throne.”⁴⁸⁵ The *Rescript* soon became the cornerstone of the Meiji education system, becoming the centre of ceremonies involving its recitation. Ritual acts of obeisance before the Royal portrait and copy of the *Rescript* were used to instil submission to the Throne and (more importantly) the Imperial State in students.⁴⁸⁶ Toshio Nishi described the *Rescript* as “transform[ing] ‘education’ into ‘indoctrination’...demand[ing] from the Japanese people an absolute allegiance to the Throne...prais[ing] an authoritarian hierarchy as social harmony.”⁴⁸⁷ The *Rescript*’s authoritarian nature and focus on educating citizens suited for the oligarch-controlled state, thus laid foundations for a system to be exploited by the militarists.

The Allied narrative specifically targeted the militarisation of the Meiji system from the late 1920s. Militarisation was discussed around the idea of infiltration (overt or otherwise) and modifying the content of textbook and curricula to spread propaganda and inculcate youth with militarist ideologies. One of the key methods of militarisation

⁴⁸² Supreme Commander for the Allied Powers, Civil Information and Education Section, *Education in the New Japan*, volume 1, (Tokyo, General Headquarters, Supreme Commander for the Allied Powers, Civil Information and Education Section, Education Division, 1948), p. 25.

⁴⁸³ Sharon H. Nolte and Ōnishi Hajime, National Morality and Universal Ethics. Ōnishi Hajime and the Imperial Rescript on Education, *Monumenta Nipponica* 38 (1983) 283-294, at 284.

⁴⁸⁴ Ibid

⁴⁸⁵ *Education in the New Japan*, Vol. 2, p. 76.

⁴⁸⁶ Takemae, *Inside GHQ*, p. 357.

⁴⁸⁷ Toshio Nishi, ‘Education during the Meiji-Taishō-Shōwa Periods’ in *The Occupation of Japan: Educational and Social Reform*, ed. Thomas W. Burkman, (Norfolk, MacArthur Memorial, 1982), pp. 15-20, at p. 17.

was through official Ministry policies intended as aides to interpretation of the *Rescript* and teaching manuals. Two particular examples in 1937 and 1941 help to illustrate the changing nature of education and official policy, the *Kokutai no Hongi* (Cardinal Principles of the National Body) of March 1937, and the *Shinmin no Michi* (Way of the Subject) of July 1941. Both these documents were issued by the *Mombushō* and intended both as interpretative guides for the *Rescript* and as a method of promulgating Ministry education policies.⁴⁸⁸ *Kokutai no Hongi* outlined a construct of national polity and morality based around loyalty to the Throne and State founded in turn on eight particular aspects, including 'The Martial Spirit.' This was defined as "that which tries to give life to all things...it is a strife which has peace at its basis with a promise to raise and to develop; and it gives life to things through its strife. War, in this sense, is not by any means intended for the destruction, overpowering, or subjugation of others; and it should be a thing for the bringing about of great harmony..."⁴⁸⁹ *Shinmin no michi* emphasised "the construction of a moral world based on the spirit of the foundation of the country" and was described by Anderson as "a textbook for the indoctrination of teachers and students...defend[ing] on moral grounds the activities of Japan abroad."⁴⁹⁰ US officials argued that the primary method of control of instructional content was through the rewriting of textbooks, without radically affecting the existing curriculum, and that "each subject was exploited to the full for its propaganda value."⁴⁹¹ Particular emphasis was placed on subjects such as history. For example a 1937 directive for secondary schools, teachers in higher grades emphasised "the incomparable merits of Japan's national polity to be the basis for political and historical orientation."⁴⁹² More striking was the content of textbooks themselves, as noted by Harry Wray, written "in a spirit of strident, righteous nationalism. Any criticism of the past was absent; gone too were adulatory remarks about the West and the condescending attitude toward Asia."⁴⁹³ Ienaga referenced a textbook for

⁴⁸⁸ Takemae, *Inside GHQ*, p. 357.

⁴⁸⁹ Fundamentals of Our National Polity [source translation] in *Sources of Japanese Tradition, Part Five: Japan and the West*, compiled by Ryusaku Tsunoda, Wm. Theodore de Bary, Donald Keene (New York, Columbia University Press, 1964), pp. 785-795, at p. 790.

⁴⁹⁰ *Shinmin no michi* quote from Chushichi Tsuzuki, *The Pursuit of Power in Modern Japan, 1825-1995* (New York, Oxford University Press, 2000), p. 267; Anderson, *Three Epochs*, p. 17.

⁴⁹¹ Education Research Branch, Civil Information and Education Section, Education for War (Tokyo, SCAP, 1948) from Hideo Satō, Eiichi Suzuki, Gary Hoichi Tsuchimochi, *Educational Reform in Japan, 1945-1952, Part 1* (Bethesda, Congressional Information Service; Tokyo, Maruzen Co., 1991), 2-B-5, p. 110.

⁴⁹² 'Ministry of Education Directive (Mombushō Kunrei), No. 9, 27 March 1937' cited in *Ibid*, p. 116.

⁴⁹³ Harry Wray, 'A Study in Contrasts: Japanese School Textbooks of 1903 and 1941-5', *Monumenta Nipponica* 28 (1973) 69-86, at 76. [Assumedly this last comment refers to a self-deprecating attitude about Japan]

elementary students of 1941 that argued about the Manchurian Incident “Our country had no choice but to dispatch troops and drive Chinese forces out of Manchuria.”⁴⁹⁴ It justified the outbreak of war in 1937 as follows

*To correct the mistaken views of the Chinese and establish eternal peace in the Orient, Japan sent its righteous forces into action...United in purpose, we shall persevere to accomplish this great mission. We are laying the foundation for eternal peace in East Asia.*⁴⁹⁵

This militaristic content went beyond ‘obvious’ classes like history, and extended into other areas of study such as language, where third-grade language textbooks used lessons about submarines

*Submerged, we draw close to approaching enemy warships and sink them with torpedoes. Sometimes we steal into the enemy’s port and suddenly attack his warships. When the enemy vessel is weak, we remain on the surface and sink him with our cannon or torpedoes.*⁴⁹⁶

An interesting case study for the ‘problem’ of education was the discussions around the *shūshin* or ‘morals’ classes in the school curriculum. The use of education to inculcate ideas of ‘ethics’ and ideas of national identity was not unique to Japan. This is an integral part of modern national education systems that emerged in the 19th century and their use in ‘constructing’ citizens.⁴⁹⁷ However, *shūshin* classes were identified as an important path for the militarisation of Japanese youth. American academic Charles Nelson Spinks noted *shūshin* classes (and their higher education equivalent) were a key method of emphasising the spiritual training of the Rescript.⁴⁹⁸ This was not simply an American perception, as Saburo Ienaga noted *shūshin* textbooks already used stories of military heroism as ethical lessons in the *Taishō* period, and this increased in the 1930s. One specific example was how fourth grade *shūshin* classes taught about the Yasukuni Shrine

⁴⁹⁴ Ienaga Saburo, The Glorification of War in Japanese Education, *International Security* 18 (1993-1994) 113-133, at 121.

⁴⁹⁵ Ibid.

⁴⁹⁶ Ienaga, The Glorification of War, 121-2.

⁴⁹⁷ A key work in this area was Eugen Weber’s *Peasants into Frenchmen: The Modernization of Rural France, 1870-1914* (Stanford, Stanford University Press, 1976). An interesting case study is Stephen L Harp, *Learning to be Loyal: Primary Schooling as Nation Building in Alsace and Lorraine, 1850-1940*, (DeKalb, Northern Illinois University Press, 1998) looking at both French and German uses of education in Alsace-Lorraine.

⁴⁹⁸ Charles Nelson Spinks, ‘Indoctrination and Re-Education of Japanese Youth’, *Pacific Affairs* 17 (1944) 56-70, at 60.

and how children should seek to emulate the heroism of those interred there and serve Japan.⁴⁹⁹ Robert King Hall (one of the key CIE officials) noted a discernible trend towards nationalism in successive editions of textbooks between 1932 and 1940, and two of the major themes increasingly emphasised were a code of ethics emphasising loyalty, filial piety, bravery and chauvinistic honour, along with increasingly militaristic and nationalistic themes.⁵⁰⁰ The increasing militarisation of *shūshin* classes was a consequence of the increasing militarisation of the Japanese government, but also one cause of the increasing militarisation of society.

SCAP policies

Several policy documents concerned with or at least relating to education existed before the beginning of the Occupation. These show that education reform was an important part of American planning ideas, and part of the desire for wider demilitarisation and democratisation. *SWNCC 150/4/A* stated, “Militarism and ultra-nationalism, in doctrine and practice, including para-military training, shall be eliminated from the educational system,” and that former officers and “other exponents of militarism and ultra-nationalism” were to be purged.⁵⁰¹ There were two important policy documents specifically on the matter of education produced in 1944 and 1945. The first was *PWC 287/a*, a basic proposal for restructuring schools drafted 6 November 1944. It argued,

*The system as it is now operates and as it [is] now controlled supports an authoritarian social and political regime. It does not undertake to develop individual initiative and character but aims to create a general high level of educational attainment so that a supply of well trained instruments will be available for national service.*⁵⁰²

It continued that

⁴⁹⁹ Ienaga Saburo, *The Glorification of War in Japanese Education*, *International Security* 18 (1993-1994) 113-133, at 119.

⁵⁰⁰ Robert King Hall, *Education for a New Japan*, (New Haven, Yale University Press, 1949), p. 179.

⁵⁰¹ *SWNCC 150/4/A*, Part III.

⁵⁰² *PWC-287a*, 6 November 1944, *JAPAN: THE EDUCATION SYSTEM UNDER MILITARY GOVERNMENT*, from Hideo Satō, Eiichi Suzuki, Gary Hoichi Tsuchimochi, *Educational Reform in Japan, 1945-1952, Part 1* (Bethesda, Congressional Information Service; Tokyo, Maruzen Co., 1991], 1-B-3, p. 2.

the military clique that now rules the nation manipulates education. The inculcation of an extreme nationalism and a glorification of war, combined with the doctrine of the “divine destiny” of Japan, hold the common people under the control of the state for the service of the state.⁵⁰³

Given this, reform of the system was vital, as the problems it presented could in the view of the drafters of this policy

be resolved only as principles are introduced and means adopted which will foster in the mind of the present and future generations of Japanese children and youth the psychological and intellectual basis for a policy of international cooperation by Japan.⁵⁰⁴

Based on *PWC 287/a, SWNCC 162/D* of 19 July 1945 was the major pre-surrender policy concerning education arguing “It is desirable, as part of the function of military government in Japan, to undertake a program of reeducation and reorientation of the Japanese, designed to bring about a Japan which will cease to be a menace to international security.”⁵⁰⁵ This was justified on the basic objective of establishing “a Japan which will not again disturb the peace of the world and which will eventually assume its proper place as a member of the family of nations.” To achieve this, the drafters argued it was necessary to “effect changes in certain ideologies and ways of thinking of the individual Japanese...which have in the past motivated the Japanese people as a whole in pursuit of chauvinistic and militaristic policies.”⁵⁰⁶ The policy proposed the utilisation of existing Japanese norms where these conformed to basic principles of democracy and fair dealing, and argued that there would be ready Japanese collaborators disposed to assist in education reforms. It suggested that any reform program be designed so that it was not reliant on Allied controls, and could be carried on by the Japanese themselves and to this end, participation from local groups and organisations to be encouraged. Interestingly, in the context of the ongoing debate between moderate and harsh peace advocates, the paper specifically denied that the plans were “predicated on any sympathy for the Japanese people or on any desire for a “soft peace.””⁵⁰⁷ These pre-surrender policies provided the backing for the major education reforms undertaken by SCAP during the

⁵⁰³ *PWC 287/a*, p. 2.

⁵⁰⁴ *Ibid.*, p. 3

⁵⁰⁵ *SWNCC 162/D*, 19 July 1945, *STATE-WAR-NAVY COORDINATING SUBCOMMITTEE DIRECTIVE, POSITIVE POLICY FOR REORIENTATION OF THE JAPANESE* from *Ibid.*, 1-B-5.

⁵⁰⁶ *Ibid.*

⁵⁰⁷ *Ibid.*

Occupation period. These reforms can be characterised as involving both an initial flurry of immediate directives in 1945-6, combined with the more complex reforms implemented more gradually over the whole Occupation period. Unlike the political reforms previously discussed which in some respects were largely 'complete' by the end of 1947, education reform continued for longer, with major reforms being implemented into 1950.

There were four key directives concerning education reform issued by SCAP in the early Occupation period. Education was one of the 'Five Great Reforms' that SCAP demanded from the new Shidehara government in October 1945, and the four key directives were issued in October and December 1945. *SCAPIN-178* of 22 October, *SCAPIN-212* of 30 October, *SCAPIN-445* of 15 December, and *SCAPIN-519* of 31 December were all aimed, in Takemae's view, at "encourag[ing] liberal education and radically revis[ing] content."⁵⁰⁸ Of these directives, the most relevant are *SCAPIN-178* and *SCAPIN-519* as these two directives concerned re-education most specifically.⁵⁰⁹ *SCAPIN-178* directed that "the content of all instruction will be critically examined, revised, and controlled" and that "dissemination of militaristic and ultra-nationalistic ideology will be prohibited [along with military drill]. Along with this, the "inculcation of concepts and establishment of practices in harmony with [the positive aims of the occupation], will be encouraged."⁵¹⁰ The directive also required the investigation of all personnel, stating that those who were "active exponents of militarism and ultra-nationalism, and those actively antagonistic to the policies of the occupation will be removed."⁵¹¹ Personnel who had been previously removed for liberal or anti-militaristic views or activities were to be re-instated, and discrimination against students or personnel for their views was to be prohibited. Students and personnel were also to be encouraged to critically evaluate the content of instruction and informed both of occupation policies, but more importantly "of the part played by militaristic leaders, their active collaborators, and those who by passive acquiescence committed the nation to war with the inevitable result of defeat, distress, and the present deplorable state of the Japanese people." Next, *SCAPIN-178* set out that

⁵⁰⁸ Takemae, *Inside GHQ*, p. 351.

⁵⁰⁹ *SCAPIN-212* was an important part of removing militarist and nationalist influence, however the purge was previously discussed in Chapter 2 in detail.

⁵¹⁰ Office of the Supreme Commander for the Allied Powers, *SCAPIN-178*, 22 October 1945, *Memorandum for the Japanese Government, Subject: Administration of the Educational System of Japan*.

⁵¹¹ *Ibid.*

“instrumentalities of educational processes will be critically examined, revised, and controlled.”⁵¹² Existing educational material was to be examined as quickly as possible, and “those portions designed to promote a militaristic or ultra-nationalistic ideology” removed. New educational materials “designed to produce an educated, peaceful, and responsible citizenry” were to be produced and substituted as rapidly as possible, and the aim was to establish a normally operating educational system in the same period. *SCAPIN-519* directed the suspension of courses in Japanese history, geography and ‘morals’ (or *shūshin*), on the basis that “the Japanese government has used education to inculcate militaristic and ultra-nationalistic ideologies which have been inextricably interwoven in certain textbooks imposed on students.”⁵¹³ All of these courses were to be suspended immediately, and were not to be resumed until permission to do so was granted. The *Mombushō* was directed to collect all textbooks and teachers’ manuals relating to this course for destruction, and was to prepare a plan for substitute courses to be approved by SCAP. These SCAP directives were an important part of the first phase of reform that was accomplished relatively quickly, and with what Ronald Stone Anderson described as “willing, sometimes eager, Japanese cooperation.” He continued: “Among the public there was universal revulsion for militarism. Citizens and teachers gladly abandoned all forms and practices that perpetuated it.”⁵¹⁴

However, the most important US policy document was not concerned with negative reform, but was the positive reform proposals of the *Report of the United States Education Mission to Japan*. The formal basis of the United States Education Mission to Japan (USEM) was the request made by MacArthur to the War Department in a 4 January 1946 telegram, in which he argued that the *Mombushō* was technically unqualified to plan and implement the necessary reforms. On this basis, the request was made for experts to help in four key areas of reform, “education for democracy in Japan, psychology in the re-education of Japan, administrative reorganization of the educational system of Japan, higher education

⁵¹² *SCAPIN-178*.

⁵¹³ Office of the Supreme Commander for the Allied Powers, *SCAPIN-519*, 31 December 1945, *Memorandum for the Japanese Government, Subject: Suspension of courses in Morals (Shushin), Japanese History, and Geography*, Appendix XVI, Supreme Commander for the Allied Powers. General Headquarters, HNMAO (Tokyo, SCAP, 1952) *Monograph 31 - Education*, [MP 65-4 Roll No.6, Monographs 29-32, Library of the University of Wisconsin, Madison].

⁵¹⁴ R.S. Anderson, *Education in Japan: A Century of Modern Development*, (Washington, U.S. Government Printing Office, 1975), p. 64.

in the rehabilitation of Japan.”⁵¹⁵ The Mission was formed through the State Department, organised by Gordon T. Bowles, and consisted of twenty-seven members. Edward Beauchamp argued that the USEM reflected US politics and educational practices, in that it was ‘representative’ both geographically and of various levels of education. However, it was also ‘homogenous’ in that its members were all ‘mainstream’ educators and reflected the contemporary consensus.⁵¹⁶ The *Report* was produced based on the discussions and field trips conducted by the USEM on its three-week visit to Japan from 9 March 1946. Despite its relatively short visit, it provided ‘a blueprint for institutional reform of education.’⁵¹⁷ The *Report* reflected American idealism and its authors’ faith in the power of education to change Japan, and the importance of reform. MacArthur’s introductory statement was an apt description, “It is a document of ideals high in the democratic tradition. In origin, these ideals are universal. Likewise universal are the ends envisaged by the mission.”⁵¹⁸ The USEM professed they did “...not come in the spirit of conquerors, but as experienced educators who believe that there is an unmeasured potential for freedom and for individual and social growth in every human being.”⁵¹⁹ The core of the USEM’s proposals were positive education reforms aimed not simply at the removal of militarist influences, but their replacement with democratic ideas and practices. The *Report* stated, “We would, therefore, not only stop wrong teaching, but also, as far as possible, equalize their opportunities, providing teachers and schools to inform their minds without hardening their hearts.”⁵²⁰ The *Report*’s basic recommendations were for the *Imperial Rescript* on Education to be repealed, the revision of textbook and curricula along democratic lines, the decentralisation of education administration, the introduction of a ‘6-3-3’ school system, the reform of teacher training to encourage both democratic teaching methods and democratic principles in teachers, the reform of higher education to make it more open, and language simplification reforms.⁵²¹ Running through

⁵¹⁵ Nishi Toshio, *Unconditional Democracy: Education and Politics in Occupied Japan, 1945-1952* (Stanford, Stanford University Press, 1982), p. 189.

⁵¹⁶ Edward Beauchamp, ‘Educational and Social Reform in Japan: The First United States Education Mission to Japan, 1946’, in *The Occupation of Japan: Educational and Social Reform*, ed. Thomas W. Burkman, (Norfolk, MacArthur Memorial, 1982), pp. 175-192, at p. 176.

⁵¹⁷ Takemae, *Inside GHQ*, p. 352.

⁵¹⁸ *Report of the United States Education Mission to Japan - Submitted to the Supreme Commander for the Allied Powers, Tokyo, March 30, 1946* (Washington, United States Government Printing Office, 1946) [Department of State Publication 2579 Far Eastern Series 11] p. iii.

⁵¹⁹ *Ibid.*, p. 3.

⁵²⁰ *Ibid.*

⁵²¹ *Ibid.*, pp. 57-62.

these recommendations was the perception of the importance of democracy in education, and the role of education in building democracy for the future. The authors argued, “The inalienable and universal rights of people are safeguarded largely through the process of education. Schools are established to supplement and enrich the experiences of people. That education is most desirable which results in the individual’s attaining progressively throughout life his own best self.”⁵²² The *Report* represented “a faith in the wholesale exportability to Japan of dominant American educational practices,” and was “a legitimization of many educational views held dear by American educators.”⁵²³ It became formal policy through being forwarded by the State Department to the FEC, and was issued by the latter as the ‘*Policy for the Revision of the Japanese Educational System*’ on 27 March 1947.

Implementation of education reforms

The implementation of the reforms outlined in both the SCAP directives and the *Report* took longer than the implementation of constitutional reform that was essentially complete by the end of 1947. Given the wide-ranging nature of education reform, it is not possible to discuss all of the reforms implemented, and so two reforms in particular will be discussed; textbook reform and the decentralisation reforms. These two reforms illustrate how the occupiers sought to solve the problem of education, but also the importance of collaboration with the Japanese in the success and failure of reforms. The key legislative instrument passed by the Diet concerning education reform (although not the only one passed) was the *Fundamental Law of Education* (FLE) of 31 March 1947. The *FLE*’s preamble argued, “Having established the Constitution of Japan, we have shown our resolution to contribute to the peace of the world and welfare of humanity by building a democratic and cultural state. **The realization of this idea shall depend fundamentally on the power of education.**”⁵²⁴ The *FLE* was the broad statement of principles that essentially legislated most of the recommendations of the *Report*, supported by the JERC. Article 10 set out part of the rationale for SCAP’s attempted decentralisation reforms, in that “Education shall not be subject to improper control, but

⁵²² *Report of the USEM*, p. 24.

⁵²³ Beauchamp, ‘Educational and Social Reform in Japan’, p. 188.

⁵²⁴ ‘The Fundamental Law of Education’ (**Kyoiku Kihon Ho**) (Law No. 25) [Passed: 31 March 1947] from *Japanese Education Since 1945: A Documentary Study*, ed. Edward Beauchamp Jr. and James M. Vardaman (Armonk, M.E. Sharpe, 1994), pp. 109-111 at p. 109. [my emphasis]

shall be directly responsible to the whole people.”⁵²⁵ The *FLE* was in essence a replacement for the Rescript (though not formally as the latter was not formally revoked until 1948), and as Anderson emphasised “The Rescript underscored duties; the Law stressed rights.”⁵²⁶ While the *FLE* provided an important statement of intent for the future of education in Japan, it was merely a statement of principles. The substance of the reforms was made through implementing legislation of the Diet, and the modification of policies of the *Mombushō*.

Given the indirect nature of the occupation of Japan, the Japanese themselves conducted the implementation process in legislative terms (though more or less under the oversight of SCAP). The implementation of education reforms involved officers from CIE, but also a great deal of collaboration with the *Mombushō* and with Japanese educators. The collaboration with educators was especially important in implementing reforms as their general agreement with the reforms meant that in the face of *Mombushō* opposition, CIE still had willing Japanese collaborators to work with and lobby against the *Mombushō*. Shibata Masako notes also that the Japanese Education Reform Council (JERC) were able to help CIE negotiate with the *Mombushō*, and that the Japanese education leadership were already split from within.⁵²⁷ The JERC was vitally important as while it did not agree with every detail of CIE reform proposals, “there was such substantial agreement that all doubt seemed to be removed as to the general direction in which Japanese education would move.”⁵²⁸ The JERC was also useful as something of a barometer for CIE in that they were able to get some idea of the popularity or feasibility of proposed reforms from Japanese educators. The chief of Education Division Mark T. Orr maintained a close working relationship with JERC’s vice-chief Nanbara Shigeru (president of Tokyo Imperial University). Orr further stated that it was

our policy that we would not do anything without getting the full review by the JERC...My feeling...was that our objectives...would not have much meaning unless there was strong Japanese

⁵²⁵ *Fundamental Law of Education*, Article 10.

⁵²⁶ Anderson, *Education in Japan*, p. 67.

⁵²⁷ Shibata Masako, *Japan and Germany under the U.S. Occupation: A Comparative Analysis of Post-War Education Reform* (Lanham MD, Lexington Books, 2005) p. 95.

⁵²⁸ Joseph C. Trainor, *Educational Reform in Occupied Japan* (Tokyo, Meisei University Press, 1983), p. 112.

support for every major reform. So I did not want any reforms that would not be supported, looking toward the future when there would no longer be an occupation.⁵²⁹

Collaboration between individual officials and educators was also of great importance at all levels, including within individual schools. The willingness of Japanese teachers and officials to embrace the reforms was an invaluable part of their implementation. Norman Graebner (a CIE officer) working in Yokohama later received a letter from Tanaba Sue, a teacher he had worked with, in which she stated

The results of my progress during these lectures on democracy may not cover much, yet my inner self has made a definite development...although the sum total of my learning may not be very appreciable, even the faint light which penetrates through this path of development will not be wholly worthless.⁵³⁰

Textbook reform was perhaps one of the more obvious reforms to be undertaken by the occupiers, as this was a relatively easy and direct form of spreading and inculcating future generations with political, social, and ethical ideas. For both the militarists and the Allied occupiers, the content of textbooks was an invaluable tool in their attempts to reorient Japanese society. SCAP itself recognised this, arguing “the most conspicuous characteristic of the school, other than the building and perhaps the teacher, is the textbook...It occupies a position of unique importance in the educational process.”⁵³¹ Reforming textbooks was also something that could make a direct and immediate statement about the intention and scale of reform. In September 1945, the *Mombushō* ordered schools to reopen and finish the school year (as the surrender had occurred during the summer break), and on 3 October, teachers were instructed to have students ink over or remove sections of books deemed ‘inappropriate.’⁵³² This had a powerful psychological impact, “impress[ing] indelibly on youthful minds the harsh finality of defeat.”⁵³³

⁵²⁹ Takemae, *Inside GHQ*, p. 369.

⁵³⁰ Norman A. Graebner, ‘Occupation Policy and the Schools of Yokohama, 1945-1946’ in *The Occupation of Japan: Educational and Social Reform*, ed. Thomas W. Burkman, (Norfolk, MacArthur Memorial, 1982), pp. 219-230, at p. 229-230.

⁵³¹ SCAP, *Education for War*, p. 129.

⁵³² Takemae, *Inside GHQ*, p. 361.

⁵³³ *Ibid.*, quoting Kurita Wataru, ‘Making Peace with Hirohito and a Militaristic Past’, *Japan Quarterly* 36 (1989) 186-192, at 189.

The *Mombushō* itself had begun its own textbook reform program in October 1945, appointing the historian Toyoda Takeshi to lead the compilation of new history textbooks for elementary and middle schools. Toyoda produced a draft by March 1946 that was visibly different from pre-surrender textbooks, but retained elements unacceptable to CIE officials.⁵³⁴ CIE was also concerned how Ministry compilers repeatedly submitted objectionable material even if it had already been rejected. CIE was also concerned with how long compilation of acceptable works was taking, as books that could have been ready for the new school year in March might not be ready until spring 1947.⁵³⁵ Rather than intervene directly by demanding dismissals or encouraging resignations, CIE used Japanese educators as 'go-betweens' to inform *Mombushō* officials of their displeasure, and the decision was made for a special committee to be formed, avoiding the existing compilers.⁵³⁶ In May 1946, this was formed with authors selected by the *Mombushō*, approved by CIE, and given one month to complete draft textbooks for elementary, middle and normal schools.⁵³⁷ The work proceeded rapidly, with four completed chapters in manuscript form within fifteen days of the first meetings. In part, the work proceeded rapidly because the writers complied with CIE instructions on content and their work required little revision or amendment.⁵³⁸ The texts were completed quickly enough for publishing to begin in early June, and were available by autumn 1946. By October 1946, the government requested and received permission from SCAP to resume history courses using approved textbooks.⁵³⁹ The resulting textbooks were not without problems, igniting internal and external criticism. Other Allied governments thought reform had not gone far enough, while within Japan, Marxist historians and leftist organisations in particular made similar arguments.⁵⁴⁰ However, the majority view within Japan was supportive, and despite only being stopgap textbooks, the works produced in 1946 were influential in future practice; "in general they were taken to presage a new era where

⁵³⁴ Yoko H. Thakur, 'History Textbook Reform in Allied Occupied Japan, 1945-52', *History of Education Quarterly* 35 (1995) 261-278, at 268.

⁵³⁵ Trainor, *Educational Reform in Occupied Japan*, p. 89.

⁵³⁶ *Ibid.*, at pp. 90-91.

⁵³⁷ Thakur, 'History Textbook Reform', 269.

⁵³⁸ Trainor, *Educational Reform in Occupied Japan*, p. 98.

⁵³⁹ *Ibid.*

⁵⁴⁰ Thakur, 'History Textbook Reform', 270.

serious inquiry into the past of the Japanese people would be possible and interpretations of the nation's history could be made on sound bases."⁵⁴¹

The decentralisation of the Japanese education system was one of the major reforms intended by the Allied occupiers, based on the perception of an overly centralised administration having two major flaws; it provided a mechanism for militarist control and influence from above, and the administration was in itself anti-democratic. The occupiers went to great lengths to encourage the decentralisation of the Japanese education administration in the face of general opposition from the Japanese themselves. It is not clear if CIE officials grasped the irony of imposing democratic reforms in a decidedly undemocratic manner. Internal studies argued that the *Mombushō* was key in the process of indoctrination; "[the] central organ of government through which the rulers of Japan had effectuated...[indoctrination] with the tenets of militarism, ultranationalism and State Shintoism."⁵⁴² CIE officials saw the *Mombushō* as controlling education through five means; drafting laws and regulations, direction of administration and supervision, financial control, monopolisation of educational material, and 'thought supervision' measures.⁵⁴³

There were three main implementing laws concerning decentralisation; the *Board of Education Law* (15 July 1948), the *Ministry of Education Establishment Law* (1 June 1949), and the *Private School Law* (15 December 1949). These implementing laws all attacked centralisation by removing the monopoly of power and responsibilities from the *Mombushō*, and allowing more participation from the people. The *Board of Education Law* placed the direct administration of schools on elected education boards in prefectures and municipal councils, "realizing that education should not submit to undue control and should be responsible directly to the entire people."⁵⁴⁴ These boards (seven members for prefectures and five for municipalities) managed curricula, textbook selection, and personnel hiring and were to be elected to four-year terms. Essentially, this applied the decentralised administration of American education in the states onto the administrative

⁵⁴¹ Trainor, *Educational Reform in Occupied Japan*, pp. 98-99.

⁵⁴² Wray, 'Decentralization of Education in the Allied Occupation of Japan, 1945-1952', p. 144, citing Maj. Edward H. Farr, Education and Religion subsection, Public Affairs Section, 29 September 1945 study.

⁵⁴³ Hall, *Education for a New Japan*, p. 288.

⁵⁴⁴ The Board of Education Law (Law No. 170) (*Kyoiku linkai Ho*) July 15, 1948 in *Japanese Education*, pp. 117-118 at p. 117.

units of Japan, the prefectures that were seen as analogous, despite the area and population of Japanese prefectures generally far smaller than US states.⁵⁴⁵ There was a degree of optimism among CIE officials concerning the local boards, which concluded that “despite some quickly recognized deficiencies, such as limitation of authority and political dependence of boards and some weaknesses in election procedure, the measure was a revolutionary step in the process of transferring authority over education from a bureaucratic national cabinet office to the people themselves.”⁵⁴⁶ However, these “quickly recognized deficiencies” were to remain problematic. One example was financial as Articles 5 and 6 placed financial responsibility on the local public body, but allowed subsidies from national bodies. This was done on the direction of Government Section (who had to approve implementing laws) on the basis that it would make education responsible to local elected authorities.⁵⁴⁷ Yet the real effect of this was that impoverished local authorities proved incapable of supporting the new boards, and the latter required the financial help of the *Mombushō* that reduced their independence and gave the *Mombushō* implicit power over them.⁵⁴⁸ Importantly, despite the emphasis the Allied occupiers placed on decentralisation, the reform was largely a failure both on practical and political grounds. One source of conflict was allowing serving teachers to sit on these bodies with conflicts of interest and political conflicts arising. Many of these teachers were members of the major union (*Nikkyōso*/Japan Teachers’ Union) which was a largely leftist body and became associated with left-wing politics and political conflicts with the conservative Yoshida administration.⁵⁴⁹ Financial reliance on the *Mombushō* also allowed influence and control over local boards, meaning that indirectly the *Mombushō* often continued to run the system. In one respect, the *Mombushō* and CIE had the same goal, as Japanese officials understood the overweening power of the pre-1945 *Mombushō* was not desirable and wanted to weaken its power through decentralisation. However, the *Mombushō* thought CIE plans went too far and were too drastic and expensive to be practical, and feared a lowering of education standards based on Japanese experience. The initial Meiji system of 1872 had been like the decentralised US model (and the CIE plan), however it resulted in lower education standards and financially

⁵⁴⁵ Wray, ‘Decentralization of Education in the Allied Occupation of Japan, 1945-1952’, p. 148.

⁵⁴⁶ HNMAO 31, p. 105.

⁵⁴⁷ Wray, ‘Decentralization of Education in the Allied Occupation of Japan, 1945-1952’, p. 161

⁵⁴⁸ Takemae, *Inside GHQ*, p. 370.

⁵⁴⁹ *Ibid*, discussion of the *Nikkyōso* p. 367

struggling schools which in part prompted the more centralised system established in the 1880s.⁵⁵⁰

The decentralised system created at the end of the occupation survived less than a decade after the occupation's end, and administration and power was re-centralised into the post-1952 *Mombushō*. Toshiyuki Nishikawa described the *Establishment Law* as 'incomplete', and allowed the *Mombushō* to continue functioning as an authoritarian organ to execute policy.⁵⁵¹ The practical problems associated with the local boards in the early 1950s and the reassertion of *Mombushō* control by ensuring friendly officials were elected to local boards and turning many into rubber-stamps for *Mombushō* policies helped in undermining the decentralisation reforms of CIE. By 1956, the *Mombushō* was able to have elections abolished, arguing that the previous system was not democratic in practice, and caused unnecessary conflicts with local authorities.⁵⁵² The *Local Education Administration Act* of 1956 meant that while the boards remained, their members were (and remain) appointed rather than elected as CIE intended. While the *Mombushō* is not the same as its pre-1945 form, it still exerts a level of central control far higher than CIE ever intended it to, and many of the issues that Japanese education has faced since relate to this. An important point that can be drawn from the failed attempt at imposing a decentralised administration was that the occupation involved as much an image and narrative of the former regimes and occupied societies created by the US, as it reflected actual conditions 'on the ground'. Further, CIE officials seemed so enamoured with this constructed image that they generally ignored Japanese objections (reasonable or otherwise), or saw any objection as obstructionist; "such misgivings were repudiated...as self-serving, reactionary, foot dragging, elitist, or fear of the untried."⁵⁵³ An internal CIE memo was telling of the general attitude:

In the present situation...the democratic axioms and assumptions are damned well going to be accepted by the Japanese government — this is SCAP's position, it is the reason why SCAP is here

⁵⁵⁰ Wray, *Decentralization of Education in the Allied Occupation of Japan, 1945-1952*, p. 153.

⁵⁵¹ Toshiyuki Nishikawa, 'The Postwar Educational Reform in Japan — Thirty Years After the Allied Occupation' in *The Occupation of Japan: Educational and Social Reform*, ed. Thomas W. Burkman, (Norfolk, MacArthur Memorial, 1982), pp. 259-282, at p. 268-9.

⁵⁵² Wray, 'Decentralization of Education in the Allied Occupation of Japan, 1945-1952', p. 153.

⁵⁵³ *Ibid.*, p. 160.

and it is the mission of SCAP. We aren't going to debate the axioms — we are insisting upon them — Japan is going to build a society based upon the axioms of a democracy...⁵⁵⁴

This helps to illustrate the importance of collaboration in occupation reforms in that while generally the education reforms were successful in large part because of the collaboration with other Japanese actors, the decentralisation reforms fizzled because of the way they were imposed in the face of official opposition.

Germany

The problem

The experience in the US zone of Germany was similar to that in Japan. Here too the American occupiers faced the problem of reforming an educational system which had been utilised and perverted by the *NSDAP* in manipulating and controlling the German people. However, this system was also one perceived as already flawed and undemocratic, and thus necessitated substantial reform in order to remove its existing problems and support the new German democracy. They also faced the problems (as in Japan) of the ambiguities of re-education and the paradox of encouraging democratic ideals through imposition. Part of this was linguistic as the English phrase 're-' suggested both repetition and the idea of doing something differently. However, the common German phrase '*Umerziehung*' suggested a much starker and complete shift and had implications close to ideas of indoctrination.⁵⁵⁵ James M. Tent argued for three distinct phases of policy. The first phase from mid-1944 to the end of 1946 was characterised by the denazification of education, and by what Tent describes as confusion, organisational weakness, and relative disregard from the military government. The second phase in 1947 was one where OMGUS attempted to impose an American school structure model and replace the multi-track system. The third phase in 1948-9 was characterised by a shift of policy (with the general shift toward the establishment of the *BRD*) of maximizing German initiative, with increased material and personnel support. The major program in

⁵⁵⁴ Joseph Trainor, CIE memo 31 August 1946 from Wray, 'Decentralization of Education in the Allied Occupation of Japan, 1945-1952', p. 149.

⁵⁵⁵ David Phillips, 'Aspects of education for democratic citizenship in post-war Germany,' *Oxford Review of Education* 38 (2012) 567-581, at 577.

this stage was encouraging cultural and official exchanges between Germany and the United States and was successful.⁵⁵⁶

The Allied prosecutors at Nuremberg identified education and control of youth as one of the key methods of internal indoctrination and control. The Nuremberg indictment stated,

In order to make the German people amenable to their will, and to prepare them psychologically for war, the Nazi conspirators reshaped the educational system and particularly the education and training of German youth. The Leadership Principle was introduced into the schools and the Party and affiliated organizations were given wide supervisory powers over education.⁵⁵⁷

The prosecution built on this by arguing in their opening address that “...the nation was being prepared psychologically for war, and one of the most important steps was the reshaping of the educational system so as to educate German children to be amenable to their will.”⁵⁵⁸ However, there was no one defendant specifically identified and indicted for his role in terms of education through the school system which is the focus of this chapter. The indictment of Baldur von Schirach concerned his role with the *Hitlerjugend* towards the ends of indoctrination and control. This was a vital part of how education was used, but in a manner that was more like a paramilitary organisation than a school. That is not to say that the prosecutors at Nuremberg did not see this as important, but reflected the less centralised nature of German education and perhaps the selection criteria and process discussed in Chapter 3.

Several official US and Allied policies discussed the problem of education. In the instructions set out in *JCS 1067* in April 1945, the Joint Chiefs mandated that “a coordinated system of control over German education and an affirmative program of reorientation will be established, designed to completely eliminate Nazi and militaristic

⁵⁵⁶ James M. Tent ‘Mission on the Rhine: American Educational Policy in Postwar Germany, 1945-1949’, *History of Education Quarterly* 22 (1982) 255-267 at 256. See also the major study *Mission on the Rhine: Reeducation and Denazification in American-Occupied Germany* (Chicago, University of Chicago Press, 1982)

⁵⁵⁷ *Trial of the Major War Criminals, Volume I*, p. 34. The Leadership Principle (*Führerprinzip*) was a key method earlier identified on p. 31.

⁵⁵⁸ *Trial of the Major War Criminals, Volume II* p. 207.

doctrines and to encourage the development of democratic ideas.”⁵⁵⁹ This idea was repeated at Potsdam in July, where it was set out as one of the main political principles underpinning the objectives of the occupation.⁵⁶⁰ The Allies also issued a joint set of basic principles for education in June 1947 in *Control Council Directive No. 54*, which set out guiding principles of equal education opportunities, a compulsory and comprehensive education system, and emphasis on civic responsibility and a democratic way of life.⁵⁶¹ There was also an official Education Mission to Germany, but this was much less influential and effective for reform than that which had visited Japan. Shibata argues that the effectiveness of the USEM helped build Governor Clay’s (military governor of the US Zone) sense of rivalry with the occupation administration in Japan, coupled with criticisms of sluggish reform from the US government and public.⁵⁶² Clay requested the head of the Education and Religions Affairs Branch (ERA), John Taylor, to form an education mission despite Taylor’s reluctance and advice against this. The mission was dispatched in August 1946 with eleven delegates chosen largely on reputation rather than specific expertise. Unlike Japan however, German educators and administrators were less favourable towards the mission and its conclusion, while American scholars were also critical. The mission report itself was also different, as it lacked the strong assertions of the necessity of radical reform as the *Report*.⁵⁶³

The American narrative of pre-1945 German education was again similar to Japan, in which its anti-democratic elements outweighed many of its benefits and it was both a cause and ‘victim’ of the *NSDAP*’s rise to power. In particular, as argued by Brian Puaca, officials believed that

*German education possessed a long history of antidemocratic instruction. The schools, they argued, had not suddenly been corrupted under Hitler; education under the Kaiser had facilitated the nationalism that sparked World War I, while the schools of the Weimar Republic had paved the way for the Nazi seizure of power.*⁵⁶⁴

⁵⁵⁹ JCS 1067, from *Documents on Germany under Occupation, 1945-54*, pp. 13-27, at p. 20.

⁵⁶⁰ *Protocol of the Proceedings*, 1 August 1945.

⁵⁶¹ *Control Council Directive No. 54: Basic Principles for the Democratization of Education in Germany*, 25 June 1947 from *Documents on Germany*, pp. 233-234.

⁵⁶² Shibata, *Japan and Germany under the U.S. Occupation*, pp. 117-8.

⁵⁶³ *Ibid.*, p. 119.

⁵⁶⁴ Brian M. Puaca, *Learning Democracy: Education Reform in West Germany, 1945-1965*, (New York, Berghahn Books, 2009) p. 15.

American education officials (like their counterparts in Japan) arrived in Germany with particular views about German education and “perhaps their most fervent belief was that the organizational structure of the German educational system upheld the divisions of German society.”⁵⁶⁵ The Americans combined the idea of the *NSDAP* victimising Germany with that of an inherently flawed society that had to be reformed. Educator Guy Wells described the American task as “modify[ing] the pattern of culture which has been so long war-like and extremely nationalistic.”⁵⁶⁶ American government officials expressed similar ideas. The Assistant Secretary of State (1945-7) William Benton wrote to his superior James Byrnes, the basis of reforms was “to break up the caste system which pervades the German school system and to educate the German people away from authoritarianism and aggression and toward democracy and peace.”⁵⁶⁷

Implementation

Like Japan, a major emphasis of reform was school textbooks. David Phillips notes that the curriculum in German schools was heavily textbook-based, and revision of these was critical for revising the curriculum as a whole.⁵⁶⁸ The initial step in textbook reform was the practical problem of how to provide textbooks to schools in the initial years of the occupation through a massive operation of vetting Weimar period texts for the US zone.⁵⁶⁹ This involved over five million texts, and in the end, twenty volumes were approved to serve as stopgaps through to 1948.⁵⁷⁰ However, in this process, OMGUS officials came across content that they found problematic for its nationalism, militarism and xenophobia. In particular, Puaca notes “History, German language, and geography books—even those authored before 1933—contained nationalistic, militaristic, and xenophobic content that American officials could not allow to re-enter German classrooms.”⁵⁷¹ A geography text published 1927 referred to Alsace-Lorraine as ‘the old German border state’, and suggested that in 1910, 95% and 73% respectively of the

⁵⁶⁵ Puaca, *Learning Democracy*, p. 40.

⁵⁶⁶ Fremont P. Wirth, Guy Wells and Norman Frost ‘Report from Germany’, *Peabody Journal of Education*, 26 (1948) 10-18 at 14.

⁵⁶⁷ William Benton, Letter to Secretary of State James Byrnes, 10 December 1946, from Shibata, *Japan and Germany under the U.S. Occupation*, p. 118.

⁵⁶⁸ Phillips, ‘Aspects of education for democratic citizenship’, 576.

⁵⁶⁹ Puaca, *Learning Democracy*, p. 29.

⁵⁷⁰ *Ibid*, p. 30.

⁵⁷¹ *Ibid*.

populations were German, implying these territories were rightfully German. This kind of content was also found in less overtly political subjects, extending to subjects like Latin where exercises glorified strong leaders, individual sacrifice for the state, and the fighting spirit of the ancient Germanic peoples.⁵⁷²

A connected issue was producing entirely new textbooks, given that OMGUS officials were unhappy with the vast majority of existing texts. New textbooks began to appear from 1948, with the immediate post-surrender material shortages becoming less of an issue. Puaca describes these new textbooks as largely representing a departure from the previous militarism, xenophobia and fervent nationalism of past textbooks (although avoiding the crimes of the Third Reich).⁵⁷³ New history textbooks in particular were markedly different, presenting a narrative of a vibrant (if not always successful) tradition of democracy in Germany with the aim of legitimating the emerging *BRD*. In one important series *Wege der Völker*, the 1848 Revolutions were emphasised as the most vivid expression of German democracy, while the Peasants' War of the 1520s became a democratic 'revolution from below.'⁵⁷⁴ While the new textbooks had German authors (and specifically German authors resident in Germany rather than émigrés who had fled after 1933), OMGUS officials maintained control of review and vetting textbooks while outlining policies on major content issues and textbook reform was relatively successful in producing textbooks that were far more democratic in content and pedagogical practices.⁵⁷⁵

However, the process of reform in the US zone was far more complex than in Japan. While the population and territory of Japan, and thus the sheer scale of the problem were larger, Germany presented a more complex problem for the Americans. Given that Germany was divided into four occupation zones, the Americans could only directly influence and reform education in the US zone. Germany also had strong traditions of local and regional administration of education as opposed to the strong centralised *Mombushō*, coupled with the disarray caused by the sudden collapse of the *NSDAP* regime and impact of denazification. This meant that when dealing with German education officials, American

⁵⁷² Puaca, *Learning Democracy*, p. 31.

⁵⁷³ *Ibid.*, p. 80

⁵⁷⁴ *Ibid.*, pp. 80, 83.

⁵⁷⁵ *Ibid.*, p. 81.

officials were not dealing with one institution, but with four separate institutions in different areas with different backgrounds.⁵⁷⁶ The different backgrounds of the different administrations made reform more difficult, with the more politically liberal administrations in Bremen and Hesse relatively co-operative, Württemberg-Baden compliant but slow and inefficient, and Bavaria consistently opposed.⁵⁷⁷ The Bavarian Minister of Education (1946-50), Alois Hundhammer was an important opponent of American reform proposals, arguing that proposed reforms would lead to “a complete overturning of and a radical break with a cultural pattern developed during the growth of centuries.”⁵⁷⁸ Hundhammer received support from a majority of Bavarian educators and the state’s Catholic Church, making it difficult for OMGUS to push against the Bavarian government. More generally, the tradition of *kulturhoheit* (autonomy in cultural and educational matters) made it difficult for OMGUS to establish any kind of centrally organised coordinating body like the JERC to promote communication, and lobby for American reforms. As a generalization, Richard Merritt argued, “German educators seemed to view the American efforts at structural change as at best well-intentioned meddling, at worst an attempt to retard the entire German educational system.”⁵⁷⁹

The major attempt at modifying the multi-track school system came in 1947, after the main wave of educational denazification had receded. The American perspective on this system was that a single-track school system was essential to democratization; “one of the crucial points in any reform plan of the present educational system.”⁵⁸⁰ OMGUS thus proposed a single-track system, with comprehensive high schools and the abolition of tuition payments (unlike the fee-paying *Gymnasium*). This proposal was severely criticised by many parts of Bavarian society, as an attack on the traditional and confessional patterns of education rather than creating equality of opportunity. Importantly, the education reforms of the *NSDAP* had aimed at dismantling the traditional

⁵⁷⁶ The US zone was comprised of the existing *Land Freistaat Bayern*, the new Württemberg-Baden (the other parts of these Länder being in the French zone and combined into the modern Baden-Württemberg in 1952), the new Greater Hesse (the old Hesse-Nassau and the areas of Hesse within Prussia and now the *Land Hessen*), and the enclave around Bremen (modern *Freie Hansestadt Bremen*).

⁵⁷⁷ Shibata, *Japan and Germany under the U.S. Occupation*, p. 120

⁵⁷⁸ *Ibid.*, p. 121.

⁵⁷⁹ Richard L. Merritt, Ellen P. Flerlage, and Anna J. Merritt, ‘Democratizing West German Education,’ *Comparative Education* 7 (1971) 121-136, at 127.

⁵⁸⁰ ‘Analysis and Criticism of the Bavarian School Reform Plan of 1 October 1947’, from Shibata, *Japan and Germany under the U.S. Occupation*, p. 131.

confessional systems as well, and the association likely sullied the American proposals.⁵⁸¹ OMGUS tried to force the issue in January 1947, when Clay demanded *Land* governments submit basic and long-term reform plans by April and July respectively. None of the submitted plans were deemed satisfactory, and further pressure from ERA simply worsened the relationship with *Land* governments. In June, CC Directive No. 54 tried to force the issue by setting out the principle of a comprehensive education system. The issue continued to cause problems in Bavaria until 1948, when ERA officials attempted to force Hundhammer to submit a comprehensive system proposal to the Bavarian legislature in January creating a standoff. This was resolved in part by August by negotiations between Clay and the Bavarian Minister-President in which the Bavarians accepted some aspects of American reforms, but importantly not the comprehensive school system.⁵⁸² Tent notes that not all *Länder* were like Bavaria and some were more open to reform, as the conservative Christian Social Union dominated Bavaria. The SPD had more influence in Hesse and Bremen and American reforms were generally more successful. However, as Tent notes, while there was not as strong a confessional tradition in Hesse and less vocal opposition, the comprehensive education system failed to get off the ground simply because Hessian educators largely did not support the specific plan.⁵⁸³ Shibata gives a convincing explanation for the general failure of American reform in Germany;

*In sum, the major American difficulty in reforming German education derived from the view of American proposals as foreign by German leaders. German leaders maintained that the American proposals disregarded indigenous elements of German society, which were essential for sensible reflection on past deficiencies and future plans for education.*⁵⁸⁴

Overall, the plans and ideas behind education reform were broadly similar in Germany as they were in Japan. The perception of education was that it had been perverted by the *NSDAP* as a tool of indoctrination (in line with the victim thesis), coupled with the idea that education was already inherently flawed and corrupted and had helped create militarism and nationalism in Germany. As a result, simply returning to pre-1933 models

⁵⁸¹ Shibata, *Japan and Germany under the U.S. Occupation*, p. 131.

⁵⁸² Tent, 'Mission on the Rhine', 268.

⁵⁸³ *Ibid*, 270.

⁵⁸⁴ Shibata, *Japan and Germany under the U.S. Occupation*, p. 133.

and approaches was unacceptable for OMGUS, even if it was desirable for some German educators (although not all). Among the reforms implemented, textbook reform was an obvious and effective means of re-education, yet this was a slower process in Germany than in Japan. Despite the occupation effectively beginning earlier, new stopgap and permanent texts were not ready in schools until after those in Japan. However, the process of production was similar, with German authors preparing new texts under American guidance and help and producing works that, while not without their problems, were greatly improved from a liberal democratic perspective. The attempt at modifying educational structures in Germany was even more unsuccessful than in Japan, as OMGUS officials had to grapple with existing traditions of local autonomy, multiple administrations with different views rather than one central body, and their basic failure to encourage any sort of organised collaboration with German educators. Largely, the structural reforms proposed in Germany were undesired and unsupported and it is not surprising that they essentially failed.

Conclusion

Education reform in occupied Japan and Germany was a fundamental and vital aspect of the general Allied effort to remake Japan and Germany. Given the importance of education in shaping future citizens, reforming education systems perceived to have played a role in politically and socially conditioning children to accept the ideologies the Allies fought so hard to defeat was considered necessary. The conspirators had used education as a tool for the indoctrination and control of youth of Japan and Germany in several ways.

Textbooks and curricula were modified to include content intended to indoctrinate children with the political and social ideals that the militarists and *NSDAP* wished to shape society around. Military and paramilitary training was introduced into schooling and through youth organisations to prepare males physically and mentally for military service as adults. However for the occupiers, the 'problem' of education went beyond this. The structures of education that had existed before the defeated regimes were flawed in such a way that they had allowed the conspirators to pervert them. The solutions to the problem of education were important for the occupiers to get right given the central place of education in the social side of implementing the three basic aims of the occupation. These solutions involved negative actions removing objectionable elements from

education systems such as the place of the military and military training, textbooks and classes with objectionable content, and purging teaching and administrative personnel. The solutions also involved positive actions through the restructuring of education to implement curricula and textbooks that would support democracy and help citizens to think and act democratically. While the success of these reforms was not immediately apparent by the end of the occupations, the aim of remaking Japan and Germany as democratic and peaceful societies was ultimately a success. However, not all of the reforms were a success. The attempted modifications of the administrative structures of the educational systems were largely unsuccessful. Despite the decentralisation of Japanese education, and the modification of the two-track German system being important parts of occupational reforms, they failed. The decentralisation imposed on the Japanese against the opposition of *Mombushō* officials was largely reversed in the 1950s, and the attempt to end the traditional two-track system in the four *Länder* of the US Zone was never implemented. The failures of these reforms help to illustrate the importance of collaboration in occupation reforms; successful educational reforms were aided by collaboration from significant elements of the educational establishment to ensure their success. Overall however, in the long run the attempts of the US to change the hearts and minds of Japanese and German children were a success.

Conclusion

By the end of 1948, the major international criminal tribunals had handed down their sentences and adjourned their proceedings. The IMTFE majority judgment sentenced seven defendants to death, all convicted on war crimes charges. Tōjō Hideki, Doihara Kenji, Kimura Heitarō, Mutō Akira, Itagaki Seishiro, Matsui Iwane and Hirota Kōki were all executed by hanging on 23 December 1948 at Sugamo Prison, where the indicted war criminals had been held during the proceedings. The other sixteen remaining defendants were sentenced to periods of imprisonment (fourteen for life, Shigemitsu Mamoru for seven years, and Tōgō Shigenoru for twenty years). However, the level of judicial discord in the judgments was problematic. The majority judgment was signed by only six of the eleven judges, with five judges issuing separate opinions. One of these in particular, that of the Indian judge Justice Pal, dismissed the legitimacy of the entire IMTFE as victors' justice. This was a view shared by several participant accounts (mostly those involved with the defence), and many of the practical and legal problems of the IMTFE gave this claim some credence. The long delays, procedural and evidential issues, and seeming disunity helped to create the image of the flawed and problematic IMTFE. In comparison to the 'good' Nuremberg, the IMTFE almost became the 'bad other.' If even mentioned at all, it was as an emblem of what could go wrong and what not to do in international tribunals. The 'victor's justice' attack in particular has had a long life, as this view of the IMTFE has become the main trope of Japanese nationalist and revisionist narratives about the period. This was also the centre of Richard Minear's 1971 polemical work on the IMTFE, which remains one of the few English language analyses of the IMTFE. Yet despite these problems, the IMTFE was an important part of the process of dealing with the atrocities of Imperial Japan and in the construction of a new Japan after 1945.

At Nuremberg, the IMT found twenty-one defendants guilty, while three (Schacht, von Papen, and Fritzsche) were acquitted. Of those found guilty, twelve were sentenced to death and ten of these executed (Bormann was tried in absentia and Göring committed suicide before execution). After the adjournment of the IMT in October 1946, the US alone conducted twelve trials before military tribunals of several categories of accused war criminals. These covered issues relating to the Holocaust, bureaucrats, and military commanders, the first starting in December 1946 and the last finishing in April 1949 and

involving 185 defendants. 142 were found guilty on at least one charge with 24 sentenced to death. The conclusion of the IMTFE and IMT and successful prosecutions for crimes against peace, war crimes and crimes against humanity reshaping international legal and political norms. The judgment of the IMT directly influenced that of the IMTFE, and on the direction of the UN, the International Law Commission drafted the 'Nuremberg Principles' to codify the legal principles of the IMT (and by extension the IMTFE).⁵⁸⁵ The judgments also influenced the development of the 1948 Genocide Convention, the Universal Declaration of Human Rights, and the 1949 version of the Geneva Convention on the Laws of War. In the longer term, international criminal tribunals and hybrid international-national tribunals based on the models and ideals of the IMTFE and IMT were established from the 1990s concerning events in the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, Timor-Leste and Lebanon. A formal permanent international court was discussed and planned after the IMTFE and IMT but because of the Cold War only formed in the 1990s. The 1998 Rome Statute finally created the court, formally coming into being in 2002. While the development of international norms out of the tribunals of the 1940s was not smooth sailing, especially concerning the norm of crimes against peace, the post-war military tribunals were a vital step in criminalising the atrocities of the defeated enemy regimes.

The occupations shifted from the earlier phases of reform by the end of 1948. Both the occupations of Japan and Germany had moved into stages where more ambitious political and social reform was generally being scaled back, and the focus had shifted towards economic reconstruction and recovery. In Germany, growing disagreements between the Western Allies and Soviets from 1945 had led to the breakdown of relations and the opening of the Cold War. Despite the stated aim of a single united Germany, it became increasingly clear that two German entities were forming around the three zones in the west and the Soviet Zone in the east. In May 1947, the UK and US zones were combined into 'Bizonia' and with the Berlin crisis in 1948 over a western currency union, it became clear that two German states would emerge with the formation of the *BRD* in the west

⁵⁸⁵ *UN General Assembly Resolution 177*, 21 November 1947. 'Nuremberg Principles' - *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, 1950 from http://legal.un.org/ilc/texts/instruments/english/draft%20articles/7_1_1950.pdf (accessed 15 January 2015).

and *DDR* in the east in 1949. The process of handing administration and power over to the Germans, the emphasis on economic reconstruction and the perceived threat posed by the Soviets changed the occupations and reforms. A new constitution creating the *BRD* came into being in May 1949, for the most part ending the three Western occupations (although they formally continued until 1955). In Japan, the emerging Cold War began to affect SCAP and the implementation of reforms changed. The initial political reforms had allowed previously suppressed political groups (especially the communists) to organise and rebuild. However, by the end of 1947 with a change in US foreign policy, Japan too experienced a re-emphasis on economic reconstruction. The threat of a general strike in Japan and increasing labour unrest prompted a shift towards more conservative anti-communist policies. While the threatened strike was called off, SCAP began to enact anti-communist policies, and the 'Red Purge' attacked perceived threats from leftist groups and activists. Apart from a ten-month period in 1947-8, the Japanese governments during the occupation were largely conservative under the leadership of Yoshida Shigeru. These governments consolidated conservative political forces and were a predecessor to the monolithic Liberal Democratic Party of the postwar era, which held power continuously from its creation in 1955 to 1993. While willingly going through the process of democratisation and constitutional reform, many key figures in early post-occupation politics were involved in politics pre-1945 (including Yoshida), and emphasising the idea of narrow culpability of a criminal leadership worked in their interests.

Overall, the occupations and the resulting new states saw both change and continuity in both positive and negative ways. The regimes that had led them into war and committed atrocities against both their own people and those of other states were destroyed. Political purges saw hundreds of thousands removed from official positions enabling government and bureaucracy not dominated by those who had been a part of the militarism and aggressive nationalism of the past. New political actors now had a chance to take part in political life, and while there remained connections with the past, the political movements which had led Japan and Germany to the depths of war no longer had popular following or power. Importantly however significant elements of the political and bureaucratic classes had been involved with the former regimes and this likely aided official amnesia about the past. Nevertheless, Japan and part of Germany were reborn as constitutional democratic states, with power derived from the people and

firmly controlled by the law. The new constitutions placed popularly elected legislatures over governments and strictly controlled by constitutions and courts. The elitist bureaucratic and military dominated Japanese executive system was replaced by a limited executive responsible to and controlled by the Diet. While the Weimar Republic was a parliamentary republic, its executive and bureaucratic institutions were overly powerful and the *Reichstag* filled with squabbling parties and unstable coalitions unable to fulfil the role of controlling the executive. The new *BRD* system meant that the new *Bundestag* controlled the executive and the political instability of Weimar was replaced by democratic stability. The political reforms also removed the military institutions that had dominated Japanese and German political life, and the militaries eventually created anew in the new states were strictly controlled and built around an ethos of serving the constitution and the people. The occupations also saw important positive social changes in both Japan and Germany, with the emergence of fundamentally more democratic and open societies than had existed before. While this process did not take place overnight, the crimes and defeat of their former regimes turned many Japanese and Germans against militarist and nationalist ideologies. The systems of education and information control which had been used to inculcate these ideologies in the population were modified by the Allied occupiers to both remove these influences, and to replace them with systems that encouraged democratic ideologies. Education that encouraged free thought and individual thinking were an important part of building and encouraging Japanese and German democracy. The removal of the censorship regimes of the former governments also had important social effects, encouraging open thought and public discussion that had not existed before. The victim thesis had a specific positive effect in that it encouraged the psychological reconstruction of ideology. By not imposing a sense of collective blame and responsibility, it encouraged cooperation from the people during the occupation and helped the reforms gain acceptance from the people.

However, despite the many successful reforms undertaken during the occupations, and of the particular moderate peace approach taken, not all their results were positive. The moderate peace idea which focused culpability on a narrow leadership group also allowed the Japanese and German populations to engage in collective and convenient amnesia about the public/widespread compliance and/or support for the 'criminal leaders' had enabled them to act. While this attitude may have helped in the immediate

reconstruction period, the process of coming to terms with the past (*Vergangenheitsbewältigung*) and acceptance of the complex nature of the period is still hampered by the attitudes that the victim thesis and its application encouraged. This helped to encourage the general amnesia of the 1950s, where the Christian Democratic Union led governments of Chancellor Adenauer focused on reconstruction and building the new *BRD* rather than discussions of the past. Alongside this was the emphasis on the victimhood of the German people by the *NSDAP* regime as well as their suffering during and after the war at Allied hands. The narrative of suffering of the Allied bombing campaigns on German urban centres during the war, of material deprivation after the war and especially what occurred during the flight and expulsion of ethnic Germans from throughout central and eastern Europe from 1944 to 1950. This involved the movement of around twelve million ethnic Germans and sometimes involved confiscation of property and physical violence with a recent estimate of around 600,000 deaths.⁵⁸⁶ The crimes of the Third Reich were not denied per se, rather German narratives emphasised German suffering. This did not begin to shift towards a more accepting reckoning with the past until the Eichmann trial in Jerusalem in 1961, and the series of Holocaust trials in Germany through the decade. However, the narrative of German victimhood and narrow culpability remained, even if weakened. As a modern example, while the institutions of the military were abolished in Germany, the non-prosecution of military institutions, or major military figures played a part in the creation of the narrative of the 'clean *Wehrmacht*' as opposed to the criminal *SS* who had committed atrocities. The public outcry created by the major German museum exhibition in the 1990s about the war crimes of the *Wehrmacht* and shock at what it revealed was in part a result of the victim thesis applied at the IMT and in the occupation of Germany.⁵⁸⁷ The failure to force a 'proper' confrontation with the past in Japan meant that a current of victimisation survived the occupation. While this is often associated with revisionist and neo-nationalist political views, it also exists more widely (and benignly). Nevertheless, an attitude of passivity and of the Japanese people as victims both of the governments of 1931-45 and of the Allies (especially in respect of the strategic bombing campaign of 1944-5, and Hiroshima and Nagasaki). The legal and practical issues around the IMTFE

⁵⁸⁶ German Historical Museum <https://www.dhm.de/lemo/kapitel/zweiter-weltkrieg/kriegsverlauf/massenflucht> (last accessed 20 January 2015).

⁵⁸⁷ Gabriel Fawcett, 'The Wehrmacht Exhibition', *History Today* 52 (2002) 2-4.

also helped to spawn a movement from the 1950s that sought to attack the IMTFE as a way of revising views on Japan's imperial past. While arguably the influence and power of such movements have been overstated, they are a significant minority voice in Japanese society. Revisionist voices that question narratives of Japanese atrocities or even support a return to Japanese militarism have existed since the end of the occupation, emboldened by the problematic IMTFE in a way that revisionist voices in Germany were not. Controversies created by official state visits to the Yasakuni Shrine, the content of textbooks, the 'comfort women' issue remain problematic issues within Japanese society, and for Japanese foreign policy and these in part result from action and inaction on the part of SCAP during the Occupation. Japan too created a narrative around Japanese suffering and a sense of passivity, with the language around the Pacific War almost making it something that happened to Japan like an earthquake or typhoon, rather than something actively created by Japan. Media like the 1988 film *Grave of the Fireflies* highlight the suffering of Japanese civilians because of the war without necessarily engaging with the cause of that war being Japanese aggression.⁵⁸⁸

The major themes of this thesis have explored one of the major ideas which underpinned one of the main schools of thought on the occupation of the defeated states after 1945, that of the moderate peace. It was constructed as an alternative to harsher peace proposals that were being considered in planning discussions within Allied governments, and can be contrasted with the seemingly failed strongly punitive approach taken after 1918. An important part of the moderate peace theory was the idea of the victimisation of the people by their regime, the 'victim thesis'. This idea focused culpability and blame onto a perceived leadership group that was 'truly' responsible for the aggression and crimes of their regime. Thus their people, as their victims as well, were not responsible for what had occurred. This idea was built on both practical and ideological grounds. In practical terms, blaming the few instead of the many, made the life of the occupier easier by reducing the numbers of potential offenders to be punished. It was also useful during the international tribunals as a part of the purported conspiracy of the leadership groups. Ideologically, it was used as part of the justification for the moderate peace — if the leadership group was truly at fault, it made sense to treat the people as a whole more

⁵⁸⁸ Wendy Goldberg, 'Transcending the Victim's History: Takahata Isao's "Grave of the Fireflies"', *Mechademia* 4 (2009) 39-52.

moderately. The moderate and harsh peace ideas both shared three common general goals; democratisation, demilitarisation, and deradicalisation. However, the key difference was economic, as moderate peace ideas focused around modifying perceived criminal or problematic economic structures, whereas harsh peace ideas focused on essentially on deindustrialisation. The major reform ideas of the moderate peace school were all based around the victim thesis, and one of these key reforms was the international criminal tribunals focusing around a leadership conspiracy. These tribunals were both a reform in themselves, but also encapsulated the major aims of the moderate peace idea through their methods. The way in which the prosecution constructed its narrative, selected the defendants and argued the case against them was in part developed around the idea of the defeated peoples as their victims. They were also connected to wider reforms both in providing justification for reforms (in punishing and explaining wrongdoing) but also as examples of the arguments made by reformers.

Four key examples of political and social reform undertaken were the political purges, the demobilisation and abolition of the military institutions, the introduction of new constitutions, and the reform of the education system. These reforms were built around implementing the major aims of the US occupation and of realising the idea of creating a lasting peace, and were constructed around the victim thesis. Political purges focused their attention onto members of leadership groups, criminal organisations and the military as the key institutions of victimisation. The demobilisation and abolition of the military was to eliminate the institutions and means of militarism in Japanese and German society. Constitutional reform was aimed at modifying state structures both to encourage democracy but also to remove radicalism and militarism, and to expressly protect the people from future victimisation. Education reform was based on education being utilised as a tool of victimisation, but also a cause of radicalisation and militarisation. Reform was also important as a method of democratisation in creating democratic citizens along with the democratic government. The tribunals sat amongst these reforms as a tool for punishing the crimes of the past and attempting to help reconstruct the defeated nations anew. They sought to redefine the nature of international law and politics, but also to redefine the idea of Japan and Germany. This thesis has not sought to analyse every possible area of reform in which the Allied occupiers sought to remake Japan and Germany simply because it would never be

possible to do justice to them all. It has sought to discuss underlying approaches and ideas and apply them to case studies in order illustrate to their meaning. Similar analyses could be made of reforms to censorship and information control, other government reforms such as the establishment of new legislatures, encouragement of political parties, or attempts at economic reform. The idea of the victim thesis in analysing post-conflict reconstruction might also be applied to other post-conflict situations especially where judicial or quasi-judicial methods have been used, such as post-1989 Eastern Europe or post-2003 Iraq.

In his opening statement at the IMT, prosecutor Justice Robert Jackson argued “The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched.”⁵⁸⁹ Whatever failings the IMT and IMTFE may have had, they surely succeeded in this goal, as the occupations succeeded in their goal of remaking Japan and Germany. The postwar international criminal tribunals did not exist in isolation, but as a part of the effort to remake societies anew and to change international norms about how states could act both at home and abroad. The tribunals were an important tool in shaping the post-1945 order and the world we live in today.

⁵⁸⁹ *Trial of the Major War Criminals, Volume II*, p. 99.

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